STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
- -
The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,
Plaintiffs,
vs. File No. C1-94-8565
Philip Morris, Incorporated, R.J.
Reynolds Tobacco Company, Brown &
Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,
Defendants.
- -

DEPOSITION OF
VICTOR A. CORBETT, M.D.
VOLUME I
(PAGES 1 - 175)

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(The following is the deposition of VICTOR A. CORBETT, M.D., taken pursuant to notice, at the offices of Dorsey & Whitney, Pillsbury Center South, 220 South Sixth Street, Minneapolis, Minnesota, commencing at approximately 11:15 o'clock a.m., September 15, 1997.

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I N D E X

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VICTOR A. CORBETT, M.D.
called herein as a witness, being duly sworn
testified as follows:

ADVERSE EXAMINATION
BY MR. KAYSER:
Q. Sir, would you please state your full name and spell your last name?
A. Victor Alan, A-L-A-N, Corbett, C-O-R-B-E-T-T.
Q. Your address, sir?
A. Home address?
Q. Yes.
A. DELETE

Q. Who resides at the DELETED address with you, sir?
A. My wife and myself. Our children are in college, the two children.
Q. And you have two children. What ages are they?
A. Nineteen and twenty-three.
Q. Do you have any grandchildren?
A. No.
Q. It's very important that you understand the questions that I'm going to ask of you today.
This deposition can be used for a variety of

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purposes in these proceedings in motions, perhaps even in court itself.
So if you don't understand a question, you tell me.
A. I will.
Q. Also, it's necessary that this young lady on my left and your right understand both of us, so it's very difficult for her to take down nods of the heads and the usual grunts in conversation.
She can't take down both of us speaking at once so I will try to wait for you to finish and you wait for me and then we will probably have a clean record.
Again, this deposition can be used for a variety of purposes, so even though there is not a judge and jury sitting here, obviously it does some of the same solemnity.
From time to time I may refer to the court and members of the jury, and that is because this deposition may be used in those proceedings.
Do you plan on being present January of 1998 to testify in St. Paul in this matter?
A. Yes.
Q. When were you first contacted by the cigarette companies to be an expert witness in this case, sir?
MS. MARTIN: Object to the form.

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THE WITNESS: Ms. Martin contacted me I would say in early 1996. I don't exactly remember the date.

BY MR. KAYSER:

Q. Do you know how she came to call on you?

A. No.

Q. How many drafts of your report were there?

A. Possibly three.

Q. Who did you meet with with respect to these drafts from the tobacco companies?

A. I met with the lawyers from Doherty, Rumble & Butler and Shook, Hardy & Bacon.

Q. Could you tell me their names?

A. Betsy Martin, Curtis.

Q. Clyde Curtis?

A. Clyde Curtis. Bron, Ms. Bron.

Q. How many meetings did you have with the counsel from the tobacco companies?

A. Five or six.

Q. Did they write what they wanted you to sign and you revised it or did you write the report yourself?

A. We met -- we wrote it. It was revised by myself, sent back, revised, rewritten.

Q. Did the lawyers for the cigarette companies make revisions?

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A. Not without my consent.
Q. But they did make revisions and ask you for your consent?
A. Only under my advice.
MR. KAYSER: I would like to have this marked as Plaintiffs' Exhibit 3318.
(Plaintiffs' Deposition Exhibit No. 3318 - Corbett report - marked for identification.)
BY MR. KAYSER:
Q. Doctor, I have shown you what has been marked as Plaintiffs' Exhibit 3318. I would like you to page through that, and can you identify that as the report you wrote in this matter?
A. Yes, it is.
Q. And if you could take a look at your CV which is on the back, Doctor, could you just make sure that that's up to date? Please don't write on the exhibit however.
A. Okay. There probably would be only one addition that I would add to this which was a change that's three pages -- on professional associations, the American Medical Association should be added.
Q. Did you just join that?
A. Yes.
Q. On the last page, Doctor, there are various case

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names.
A. All right.
Q. In number two, trial testimony, in a case against Methodist Hospital, were you testifying for a physician or against a physician?
A. I was for the plaintiff, against the physician.
Q. Who were the attorneys in that case?
A. I honestly don't remember.
Q. Susan Pugh versus Women's Clinic?
A. Yes.
Q. What was your role in that case?
A. I was for the plaintiff, Susan Pugh.
Q. Who were the attorneys in that case?
A. Sieben -- Harry Sieben was her attorney.
Q. Reos versus Drs. Marta, Kamman and Corbett, were you a defendant in that case?
A. Yes.
Q. What was the nature of that case?
A. It was a malpractice case.
Q. What was the result?
A. I was dismissed from the case.
Q. Also, I notice that you are an Associate Clinical Professor, Department of Medicine, University of Minnesota, 1976 through the present. Do you still have that position?

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A. As far as I know.
Q. Have you ever been a candidate for full professorship?
A. No.
Q. How long have you been in private practice, Doctor?
A. Since July 1, 1974.
Q. Do you see patients on a daily basis?
A. Yes.
Q. How many patients do you have now, Doctor; what is your patient load and numbers?
A. How many patients are registered in the office or how many patients do I see on a daily basis?
Q. What's your patient load now in the sense of how many patients are registered under your name?
A. I honestly can't say. I have not looked. I would guess around a thousand to fifteen hundred.
Q. Has that stayed steady over the last five years?
A. I would say roughly steady. If not, it's grown a little bit. Part of this is a consulting practice so patients are not necessarily people that you see always on an ongoing basis.
Q. Do you have private patients who come to you say for yearly physicals and consider you their doctor?
A. Yes.

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Q. How many of those thousand to fifteen hundred are those?
A. Roughly half.
Q. Has that stayed steady for the last five years?
A. I think so.
Q. Would you turn to page 2, Doctor, of your Exhibit 3318 please?
A. Okay.
Q. I note that you discuss patients in lower socioeconomic status. Could you tell me how you define lower socioeconomic status? Is that by income or what is that?
A. I think one would have to define that partially as income and maybe mostly as income. Certainly possibly in terms of education may be also involved.
Q. How would you define it as we're sitting here today? I'm going to ask you what the next category up is and how you would define that.
A. In terms of this group of patients, I think we're talking about Medicaid patients who were on Medicaid.
Q. And the next group up would be all others or is there another category above the lower socioeconomic category that you set forth in your report?
A. The only ones I refer to I think are those

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referred to predominantly in this grouping of patients is those that fit into the lower socioeconomic.
Q. What percentage of your patients are in the lower socioeconomic group, sir, presently?
A. It would be a rough estimate, but somewhere between maybe twenty and forty percent.
Q. When patients come to you do you understand that they are to some considerable degree betting their good health life advice on you; isn't that correct?
A. Correct.
Q. When a person comes to you as a new patient I assume you sit down and talk to them about their medical history.
A. Predominantly.
Q. Ask them if they smoke?
A. Yes.
Q. How long have you asked that question of whether they smoke?
A. Probably since I was a first year medical student.
Q. Do you believe that smoking is bad for your individual patient's health?
A. It's unhealthy to smoke, yes.
Q. Do you tell your smoking patients to stop

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smoking?
A. Yes.
Q. And you tell them that for health reasons?
A. Yes.
Q. Do you provide your patients with smoking cessation programs?
A. Yes.
Q. Do you believe that smoking is addictive?
A. In a large number of people I believe that smoking is a habit that can be difficult to stop.
Q. You can go ahead and say the A word. Do you believe that smoking is addictive?
MS. MARTIN: Object to the form and asked and answered.
THE WITNESS: I would repeat my answer.
BY MR. KAYSER:
Q. When you say it's difficult to stop, it's very difficult to stop for a number of people, isn't it?
A. It's very difficult to stop for a number of people.
Q. If your patients ask you to assist them in stopping to smoke what do you tell them?
A. There are programs for smoking, for helping people stop smoking. There are programs at the

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hospital available, there are the patches that are available, there is gum that's available, there are psychologists that are available, all of which has been referred to.
Q. When you say "referred to," that means you have referred your parents to these various entities?
A. If they're willing to go and they're willing to stop smoking.
Q. Did you ever smoke?
A. Yes.
Q. For how long?
A. I think I started sometime probably early in college and stopped when I was finishing my residency.
Q. Did you stop because you felt that smoking was unhealthy for you?
A. Yes.
Q. Does your wife smoke?
A. No.
Q. Do your children smoke?
A. Not that I know of.
Q. Have you ever counseled your children not to smoke?
A. Yes.
Q. And told your children not to smoke because it

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would be injurious to their health?
A. Yes.
Q. Have you ever had a patient die of diseases that you believe is a result of their smoking?
A. There are patients that I've had who have had -- who have smoked who have died who I believe that smoking has certainly affected their outcome.
Q. When you say "affected their outcome," how do you mean? Elaborate on that, would you please, Doctor?
A. I think that people who have problems with smoking, having problems with bronchitis or pneumonia or other illnesses, that this can affect their outcome of their illness. I think it's probably contributed to them not doing well.
Q. Have you had patients die of lung cancer?
A. Yes.
Q. Have you had patients who died of lung cancer where you believe that smoking caused that lung cancer?
MS. MARTIN: Object to the form.
THE WITNESS: It's been associated with their cancer.
BY MR. KAYSER:
Q. Can you elaborate on associated with?

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A. It means that there appears to be an association between smoking and cancer, and in these patients who are smoking it is likely to have contributed.
Q. Perhaps I should have asked this before. Do you own any stock in any of the tobacco companies that have hired you in this matter?
A. No. I should say as far as I know I haven't. I have a 401K through a company, Fidelity, and as far as I know I don't, but --
Q. Do you know whether your retirement plan has any stocks in the tobacco companies that have hired you in this matter?
MS. MARTIN: Object to the form of the question.
THE WITNESS: As far as I know, no, but I can't be sure for sure.
BY MR. KAYSER:
Q. Did your parents smoke?
A. My father.
Q. Is he still alive?
A. No.
Q. Do you believe he died of a smoking related illness?
A. No.
Q. What did he die of?

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A. Myocardial infarction thirty one years after he stopped smoking.
Q. On the top of page 3, Doctor, of Exhibit 3318 you say you may supplement this report pursuant to the court's order. Do you have any present plans to supplement this report?
A. Other than my deposition, no.
MR. KAYSER: Would you mark this as Plaintiffs' Exhibit 3319?
Plaintiffs' Deposition Exhibit No. 3319 - 1989 SG insert - marked for identification.)
BY MR. KAYSER:
Q. Doctor, I'm showing you what has been marked as Plaintiffs' Exhibit 3319 which is a page from the Surgeon General's report from 1989, and I would like to direct your attention to the first paragraph of that.
First of all, have you read the various Surgeon Generals' reports over the years?
A. No.
Q. Are you familiar with them?
A. Only in what I've heard in the media referred to.
Q. Have you gone to conferences where the Surgeon General's reports have been discussed?

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A. No.
Q. At the top of Exhibit 3319 in the Surgeon General's report in 1989 it says, "Cigarette smoking is a major cause of cerebrovascular disease (stroke), the third leading cause of death in the United States." Do you agree with that statement?
A. I certainly think it's associated with that, yes.
Q. Do you believe cigarette smoking is a major cause of stroke?
A. I think certainly there is an association.
Q. Do you differentiate between association and major cause?
A. I think one is an epidemiological, and that's how I think this is used in the Surgeon General's report, and I think that probably mechanism is a different issue.
Q. Do you agree that epidemiology is a respected and legitimate science of medicine?
A. Certainly, yes.
Q. I don't mean to be unduly repetitive, Doctor, but let's see if we can get to associated with and major cause.
You seem to be quarreling with the statement that cigarette smoking is a major cause of stroke.

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I'm trying to figure out if you're differentiating between associated with and major cause.
A. I think when we're talking about association, there have been a number of studies done, reports, that says smoking and cerebrovascular disease are linked.
How the mechanism, how that happens, how smoking itself causes the stroke, I'm not sure has been fully explained.
So when I'm talking about association, I'm talking about the linking in the studies in an epidemiologic standpoint that that is strong linkage between the two.
And when I'm talking about cause, I'm talking about how the toxins or whatever actually caused the mechanism. So that's how I'm distinguishing.
Q. Is the word associated somehow a lesser term in your mind than major cause?
A. I don't think it's a lesser term. It's different.
Q. Do you think they mean the same thing; associated and cause mean the same thing?
MS. MARTIN: Objection. Asked and answered.
THE WITNESS: I think that the

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association certainly means there is an association between disease and smoking. It certainly doesn't mean that we should ignore it.

I think there is strong associated evidence saying that we should not smoke and we should pay attention to it. I think the mechanism is different.

BY MR. KAYSER:

Q. And you just said, if I heard your testimony correctly, there is a strong linkage between cigarette smoking and stroke. Do you agree with that?

A. Yes.

Q. And if you were talking to a patient who had say had a stroke and was a smoker would you tell that patient there is a strong linkage between their cigarette smoking and their stroke?

A. I probably would.

MR. KAYSER: Why don't we have this marked please.

(Plaintiffs' Deposition No. Exhibit 3320 - 1989 SG table - marked for identification.)

BY MR. KAYSER:

Q. Doctor, I'm showing you what has been marked as Exhibit 3320 which is a table from the Surgeon General's report in 1989. Would you just take a look

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at that for me, sir?
A. Okay.
Q. I'm going to ask you some questions about it.
A. Are these from two different pages?
Q. Yes.
A. So the bottom is just a continuation of the top?
Q. Yes. So you have no misunderstanding, let me show you the book.
A. Yes.
Q. Now, this is from the 1989 Surgeon General's report, Doctor, and I'd like to have you -- over on the right-hand side before I mark on it I'm going to go through these and ask you what you agree with and disagree with.
As we go through these, if you could just write down agree or disagree next to it, I would appreciate it.
MS. MARTIN: I am not going to let the witness write on exhibits. He can testify about it. He doesn't need to mark up the exhibits. You've already asked him to not mark it up.
MR. KAYSER: Now I'm asking him to. If we were in court the judge would allow the witness to write on the exhibit.

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MS. MARTIN: I think that's correct.
MR. KAYSER: So that's what I would like to do now.
MS. MARTIN: The doctor --
MR. KAYSER: Off the record.
(Discussion held off the record.)
BY MR. KAYSER:
Q. Doctor, we have before us pages 98 and 99 which is table 13 of what is commonly referred to as the Surgeon General's report of 1989.
I'm going to go down this list of items with you and ask you whether you agree or disagree, and I would ask you right next to it as I have just pointed out here to write agree or disagree as we come to those.
Do you agree that cigarette smoking has increased overall mortality in men and women?
MS. MARTIN: Where are you? Line one?
BY MR. KAYSER:
Q. Do you agree or disagree with that, that overall mortality increases --
MS. MARTIN: I'll object on the basis of foundation.
BY MR. KAYSER:

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Q. -- for those people who smoke? Do you agree with that?
A. I would agree.
Q. With respect to overall morbidity, do you think cigarette smoking increases overall morbidity?
MS. MARTIN: Objection. Foundation.
MR. KAYSER: If you'll tell me what the foundation objection is, I'll try to cure it, Counsel.
MS. MARTIN: The basis of my foundation is I think what you're asking is the basis of an epidemiological study, and I don't think the doctor has the foundation to --
BY MR. KAYSER:
Q. You have to write agree a little more dramatically than that, Doctor.
A. I think --
Q. With respect to morbidity, do you think overall morbidity is increased --
A. I think in both morbidity and mortality that when we're taking this whole table in context or out of context, it does make it a little difficult to probably answer this. So in the general sense, yes, I agree.
Q. Just for the sake of the court and the members

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of the jury, could you explain what morbidity is, Doctor?
A. Morbidity is illness that does not necessarily result in death.
Q. Then on the next line it says that cigarette smoking is a major cause of coronary heart disease in men and women. Do you agree or with that, Doctor?
A. I think it's strongly associated with.
Q. Do you believe there is a strong linkage between cigarette smoking and coronary heart disease in men and women?
A. There is a linkage between heart disease and smoking.
Q. Is it the same strong linkage that you found between cigarette smoking and stroke?
A. I believe it's probably of a lesser degree.
Q. So you disagree that cigarette smoking is a major cause of coronary heart disease; is that right?
A. I think smoking is linked to heart disease. There are a lot of causes or linkages for heart disease, this being one of them, but not the only cause.
Q. But you don't believe it's a major cause of coronary heart disease?
A. I'm not sure how major is being used here. So

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in terms of major versus minor causes, I guess you would have to define that for me. And this is taken somewhat out of context so I don't have definitions for the terms.
Q. I'm going to just assume that we have both been through high school, college and secondary education and beyond that, and I will take your definition of major cause, Doctor. I'll just let you define it in your terms.
A. Since I'm -- I can't define what somebody else is saying here, I will say that I think there is a definite linkage between smoking and heart disease.
Q. Why don't you write down definite linkage.
MS. MARTIN: Why don't you have him write disagree. I thought that's what you wanted him to do there.
BY MR. KAYSER:
Q. If you want to write disagree, if you want to write down definite linkage next to it, that's fine too. Whatever.
MS. MARTIN: Use your own words, Doctor.
BY MR. KAYSER:
Q. Now, we have talked about stroke, a cause of stroke. Do you disagree with that?

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A. There is a linkage between or association between smoking and strokes.
Q. You mentioned before there was a strong linkage. Do you agree with that?
A. Again, I think you have to go back and define strong, major, minor. Again, I haven't seen how this is defined in this report since I have not read the report.
I think that plays a role in how you define it. I understand what you're asking, but I don't know if I can answer it that way.
Q. Earlier on in your testimony you used the term strong linkage between cigarette smoking and stroke.
Are you still comfortable with your testimony or do you want to change your testimony?
A. Well --
Q. I'm using your words.
A. I understand that and I think there is a clear association. If I knew what you meant by strong or major I could probably answer that more clearly.
Q. Well, you used the word strong linkage before, I didn't.
A. I understand. So if it's a twenty percent or thirty percent or ten percent, that might be different than a fifty to eighty percent. So --

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Q. Well, I want to get back to your language though. You were the first one to say there was a "strong linkage between smoking cigarettes and stroke?"
A. I'll redefine it.
Q. Do you want to change that testimony?
A. I'll change it to an association between smoking and strokes.
Q. What is the strength of that association in your mind?
A. Having not reviewed this literature recently, I think it's in terms of probably some increase of maybe ten or twenty percent, but I'm not sure.
Q. So then -- why don't you write down disagree next to stroke then.
The next one is cigarette smoking leads to increased mortality from atherosclerotic aorta aneurysm. Would you agree with that?
A. Yes, I agree.
Q. Would you write down agree next to that, sir? The next one says a cause and most important risk factor for atherosclerotic peripheral vascular disease.
MS. MARTIN: Objection. Foundation.
BY MR. KAYSER:

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Q. Do you agree or disagree with that, Doctor?
A. I would -- again, going back to cause, I would rather use associated with. And in terms of most important risk, I'm not sure I -- I don't know.
Again, we're defining degree of risk. I think it is an important risk factor for atherosclerotic peripheral vascular disease.
MS. MARTIN: Why don't you put down you don't know.
MR. KAYSER: Counsel --
MS. MARTIN: Well, he said he doesn't know.
BY MR. KAYSER:
Q. Do you agree or disagree with that?
A. I agree it is associated with and a risk factor.
Q. But you don't consider it a cause and most important risk factor; is that right?
A. It's one of the risk factors.
Q. Is it a most important risk factors as set forth in the Surgeon General's report?
A. I don't know how he defined it.
Q. How would you define it in your many years of practice? Would you consider it a most important risk factor?
A. I would consider it an important risk factor.

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Q. Then you would agree with that?
A. I think if you would cross out most important or most I would agree with that.
Q. You would consider it an important risk factor?
A. Important risk factor and associated.
Q. Why don't you write that down.
A. As long as we're defining that way --
Q. Why don't you write it's an important risk factor.

MS. MARTIN: And associated.

BY MR. KAYSER:
Q. Next, cigarette smoking is the major cause of lung cancer in men and women. Do you agree or disagree with that?
A. There is certainly an association -- an association between smoking and lung cancer. It goes back to our definition of association and causality.
Q. Do you disagree that smoking is the major cause of lung cancer in --

MS. MARTIN: Objection. Asked and answered.

MR. KAYSER: It hasn't been.

BY MR. KAYSER:
Q. Can you tell me whether you agree or disagree whether cigarette smoking is a major risk --

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A. There is a strong association between smoking and lung cancer.
Q. But you're differentiating between strong association and major cause, aren't you?
A. Yes.
Q. So then you disagree with that, don't you?
A. To the same extent that I agree or disagree with the other ones. How about if I write associated with?
Q. Well, you disagree with the statement. The record will show that you talk about the association. You disagree with the statement?
A. I'm curious why we define it differently upstairs or above here, so I'm answering it as associated with.
Q. But, in fact, you disagree with the statement, don't you?
A. I think I've answered it. I think there is an association between lung cancer and lung cancer in men and women.
Q. How strong an association do you think there is between cigarette smoking and lung cancer in men and women, Doctor?
A. Probably about fifteen percent of the people who smoke have lung cancer.

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Q. Of the number of people who develop lung cancer how many of those are smokers?
A. Would you repeat the question?
Q. Of those men and women who have lung cancer how many of those are smokers, what percentage?
A. Approximately eighty, eighty-five percent.
Q. Would you consider that smoking is strongly associated with lung cancer in men and women?
A. Yes.
Q. Would you consider that smoking is a major cause of lung cancer in men and women?
MS. MARTIN: Objection. Asked and answered.
THE WITNESS: I think the causality of how this is associated or how it causes is not known, and so I'm not here to talk about causality. I'm here to talk about the association.
BY MR. KAYSER:
Q. Next, cigarette smoking is the major cause of laryngeal cancer in men and women. Do you agree or disagree with that, Doctor?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I guess there is an association between laryngeal cancer and men and women.

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BY MR. KAYSER:
Q. But you disagree with the statement that cigarette smoking is the major cause of laryngeal cancer; is that right?
A. I don't know if it's the major cause.
Q. Why don't you put down don't know then.
A. I will. I'm going to write down don't know incidence and again, as cause is association.
Q. Next, cigarette smoking is a major cause of the oral cavity (lip, tongue, mouth, pharynx). Do you agree or disagree?
A. I think there is an association between tobacco and oral cancer.
Q. How strong is the association, Doctor?
A. I don't know the incidence.
Q. So you disagree with the statement?
A. Again, it's a matter of cause versus association and incidence, so I don't know the incidence. Is that different than not knowing?
Q. Do you agree or disagree? If you don't know, that's fine.
A. I just don't know. I don't know the incidence.
Q. Next, it says that cigarette smoking is a major cause of esophageal cancer. Do you agree or disagree with that, Doctor?

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A. There is definitely an association between esophageal cancer and tobacco.
Q. How strong is the association, Doctor?
A. I'm not sure what the incidence is.
Q. Do you agree with the statement or you don't know?
A. I don't know the incidence and I think there is definitely an association, so --
Q. Why don't you write down what you're comfortable with. And next it says cigarette smoking is a contributory factor for bladder cancer. Do you agree or disagree with that, Doctor?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know how the Surgeon General report was generated under these circumstances.
BY MR. KAYSER:
Q. Just from your own experience, Doctor, can you tell me?
A. I would believe that there is an association.
MS. MARTIN: Let him finish.
MR. KAYSER: I haven't finished the question.
MS. MARTIN: You interrupted him with a new question.

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BY MR. KAYSER:
Q. Let me start over. From your experience as a physician in St. Paul in treating your patients do you believe that cigarette smoking is a contributory factor for bladder cancer?
A. I believe that there is an association between bladder cancer and smoking.
Q. How strong is the association?
A. I don't have an incidence.
Q. Why don't you put down with whatever you're comfortable with there, Doctor.
Doctor, next it says cigarette smoking is a contributory factor for pancreatic cancer. Do you agree or disagree with that?
MS. MARTIN: Objection. Foundation.
THE WITNESS: Again, I don't know how this is written because I have not read it. There is a --
BY MR. KAYSER:
Q. I'm asking you these questions as a physician since 1974 treating patients in St. Paul, Minnesota, so --
A. That's what I'm answering. I believe it's associated with, but I don't know the incidence. So what I'm writing is associated with incidence.

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Q. How strong is the association between cigarette smoking and pancreatic cancer, Doctor?
A. I don't know the incidence.
Q. Doctor, next it says that cigarette --
MS. MARTIN: Could you hold on?
BY MR. KAYSER:
Q. Cigarette smoking is a contributory factor for renal cancer. Do you agree or disagree with that, Doctor?
A. I have no personal experience with that. It's my understanding that there may be an association. I don't know how this is referred to in the report so I would say there is a possible association from my understanding, but I can't answer definitely.
Q. Put down whatever you're comfortable with. Again, this is in the context of your experience in your practice as a physician in St. Paul.
A. Okay.
Q. Then it says cigarette smoking -- there is an association between cigarette smoking and gastric cancer. Do you agree or disagree with that?
MS. MARTIN: Objection. Foundation.
THE WITNESS: Again, not having read this report I don't know what they're referring to. As a practicing physician it's my

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understanding there is an increase in incidence, but I don't know the incidence.
BY MR. KAYSER:
Q. Put down whatever you're comfortable with.
A. Okay.
Q. Then next it says that there is an association between cigarette smoking and cervical cancer. Do you agree with that, Doctor?
A. I don't know.
Q. Dropping down now to the bottom of the page it says that cigarette smoking is the major cause of chronic bronchitis. Do you agree with that or disagree with that, Doctor?
MS. MARTIN: Objection. Foundation.
THE WITNESS: Again, not having read the report I don't think I can comment on this as to how it pertains to the report.
BY MR. KAYSER:
Q. Again, you're referring to the report. We talked about whether or not you disagree or agree with that in the context as a practicing physician in St. Paul, Minnesota. You said --
MS. MARTIN: I'll object to foundation on that ground too.
THE WITNESS: I think that smoking is

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associated with bronchitis.
BY MR. KAYSER:
Q. Do you think it's a major cause of chronic bronchitis?
A. I would believe that there is a definite association between smoking and bronchitis.
Q. How strong is that association?
A. That would be hard to quibble with percentage, but I think it's a fairly strong association.
Q. Why don't you put down with what you're comfortable with then.
Then it says that cigarette smoking is the major cause of emphysema. In the context of your practice in St. Paul, Doctor, do you agree or disagree with that statement?
A. I think I would say pretty much the same answer I said for bronchitis.
Q. Put down whatever you're comfortable with, Doctor. Next, it says that cigarette smoking is a cause of intrauterine growth retardation.
Do you agree or disagree with that in the context of your practice in St. Paul, Minnesota?
A. In terms of -- I'm not an obstetrician. I don't do primary care in terms of delivering children and taking care of pediatrics. I don't deal with that.

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It's my understanding there is an association, but outside of that I can't --

Q. Put down whatever you're comfortable with. Cigarette smoking is a probable cause of unsuccessful pregnancy. Do you agree or disagree with that, Doctor?

MS. MARTIN: Objection. Foundation.

THE WITNESS: Again, I'm not an obstetrician-gynecologist, family practice doctor, pediatrician.

Again, I don't do that so this is outside my field, but my understanding is there is an association.

BY MR. KAYSER:

Q. Doctor, have you had pregnant women in your practice?

A. I take care of diabetes in women who are pregnant.

Q. Do you occasionally have women who are pregnant and seek your advice?

A. Only in terms of things other than their pregnancy.

Q. If a woman -- a pregnant woman comes to you and is a smoker would you advise that woman to give up smoking?

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A. Yes.
Q. For health reasons?
A. Yes.
Q. Would you tell that woman there would be a possibility she would have an unsatisfactory successful pregnancy if she continued to smoke?
A. That's part of the explanation.
Q. What's the other problems?
A. Birth weight.
Q. Say that again?
A. Low birth weight.
Q. That is children of smoking mothers have lower birth weight in --
MS. MARTIN: Objection. Foundation.
THE WITNESS: In terms of my practice that's what I would tell them.
BY MR. KAYSER:
Q. That's what you would tell your pregnant patients?
A. Yes.
Q. Doctor, the next --
MS. MARTIN: Did we mark on that one?
THE WITNESS: I -- what I wrote was associated. Can I -- can we break for a moment?
(Recess taken.)

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BY MR. KAYSER:
Q. Doctor, during the break I note that you put -- wrote something on top first with respect to morbidity and mortality. Could you just tell me what that was?
A. PHS.
Q. What does PHS mean?
A. Public health statement.
Q. Can you tell me what that means?
A. I mean I think this is a statement put out by the Surgeon General telling the public that smoking is unhealthy and you should not smoke.
Q. Do you agree with that?
A. I don't disagree with that at all. I think again it's not a statement of causality.
Q. Do you respect the Surgeon General's report that has been put out with respect to smoking?
A. Do I respect it?
Q. Yes.
A. The Surgeon General?
Q. Do you have respect for the Attorney General's report on --
A. Attorney General?
Q. Let met start over again, Doctor. Do you respect the Surgeon General's reports on smoking that

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have been put out over the years?
A. I haven't read the statements so in terms of do I respect the report, I have no reason not to respect it, but I haven't read it.
Q. Let's drop down to the bottom of the page there, Doctor. In fact, we have already done the first four.
Do you agree or disagree that cigarette smoking and other forms of tobacco are addicting?
MS. MARTIN: Object to the form.
THE WITNESS: I don't think I can comment on the -- again, how this is used in the context of the report since I have not read the report, and I assume that that's what this is about, but --
BY MR. KAYSER:
Q. But let's take it in the context of your being a physician since 1974 in St. Paul, Minnesota, Doctor, more than twenty years.
I believe that based on your experience since 1974 as an internist in St. Paul do you agree that cigarette forms and other forms of tobacco are addictive?
MS. MARTIN: Objection. Asked from earlier this morning.

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THE WITNESS: I think it's difficult to stop smoking. I think people have difficulty stopping smoking.
BY MR. KAYSER:
Q. Are you stopping short of calling cigarette smoking addictive?
A. I think there is varying degrees of ability to stop and I'm not sure of how addiction is used in this context.
Q. I'll use it in the context that you would define addictive. In the context that you would define addictive, Doctor, do you believe that cigarette smoking is addictive?
MS. MARTIN: Objection. Foundation. He's not an addictive expert.
THE WITNESS: That's true, I'm not an addiction expert, however, there are people who would find it difficult to stop smoking.
BY MR. KAYSER:
Q. Do you stop short of using the word addictive?
A. I'm not sure how we are defining addictive.
Q. I'll define addictive the way you want to define addictive, sir.
A. I'm defining addictive in terms of people having difficulty smoking.

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Q. Difficulty in smoking or stopping smoking?
A. Stopping smoking, so --
Q. If --
A. That could be defined I suppose many ways I suppose.
Q. I want to define it the way you would, Doctor.
A. That's how I am, in the very loose sense of the word.
Q. In your definition do you find that cigarette smoking for some people is addictive?
MS. MARTIN: Objection. Foundation. Object to the form.
THE WITNESS: Only in terms that I find people have difficulty stopping.
BY MR. KAYSER:
Q. What I'm trying to understand is do you connect and do you include in the term addiction people who have difficulties stopping smoking?
A. Yes.
Q. Next, that cigarette smoking is a cause of disease including lung cancer in healthy non-smokers. Do you agree with that?
A. I'm not sure I understand this, how this would fit. A cause of disease including lung cancer in healthy non-smokers?

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Q. Right.
A. What do they mean? I don't understand.
Q. Write down you don't understand.
MS. MARTIN: It looks like you haven't done anything with the top line, Doctor. Did you want to write something there?
THE WITNESS: Yes.
BY MR. KAYSER:
Q. Doctor, based on your practice in St. Paul since 1974 do you believe that cigarette smoking is a probable cause of peptic ulcer disease?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I would like to strike cause and say that it's probably associated with.
BY MR. KAYSER:
Q. So you would disagree with the statement as written?
A. As written.
Q. Write disagree then. Do you agree with the next statement that cigarette smoking -- that adverse occupational interactions cigarette smoking increases the risk of cancer?
A. In terms of how the report is written, I don't think I can answer that because I have not read it. Do I think there is an association, I don't know.

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Q. If you don't know, write don't know. And the next statement, cigarette smoking has adverse interactions with alcohol that increase the risk of cancer, do you agree or disagree with that, Doctor?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I'm sorry. I'm taking a little time writing here.
MS. MARTIN: Take your time.
THE WITNESS: In terms of the report, I don't know how that's used in context.
BY MR. KAYSER:
Q. Doctor, we can retire that comment for the moment. Thank you.
MR. KAYSER: I would ask the Court Reporter to mark the next exhibit as 3321.
(Plaintiffs' Deposition Exhibit No. 3321 - 1990 SG insert - marked for identification.)
BY MR. KAYSER:
Q. Doctor, this is from the Surgeon General's report of 1990, page Roman numeral V. It looks like they had to -- take a look at the second paragraph where it says overall benefits of smoking cessation. Are you with me down there?
A. After the second -- second paragraph under the second heading?

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Q. Overall benefits of smoking cessation. Do you see that?
A. Let me just read this.
MS. MARTIN: Take your time.
BY MR. KAYSER:
Q. I'm only going to ask you about the first sentence. Are you ready?
A. Okay.
Q. Doctor, based on your experience as a practicing physician in St. Paul since 1974 do you agree with the sentence that says, "People who quit smoking live longer than those who continue to smoke?"
MS. MARTIN: Objection. Foundation.
THE WITNESS: In terms of how this statement is made in the context of the general report, I haven't read the report so I can't comment on it. In terms of my practice, is that what you're asking?
BY MR. KAYSER:
Q. Yes.
A. I think people who don't smoke do better, live longer.
Q. So do you agree with the sentence, "People who quit smoking live longer than those who continue to smoke?"

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A. I think I answered that.
Q. I didn't get that.
MS. MARTIN: He's answering from his practice.
BY MR. KAYSER:
Q. That's all you can do, Doctor?
A. Then that's all -- I want to make sure we're clarifying this that in terms of my context of my practice, that I think that there is -- that people do do better and live longer if they don't smoke.
MR. KAYSER: Next, I will ask the Court Reporter to mark this as Exhibit 3322.
(Plaintiffs' Deposition Exhibit No. 3322 - 1990 SG insert - marked for identification.)
BY MR. KAYSER:
Q. Doctor, I'm showing you what has been marked as Plaintiffs' Deposition Exhibit 3322. It is the Surgeon General's report from 1990, page Roman numeral VI thereof.
I'd like to drop down to the third full paragraph. It says cigarette smoking is the major cause. Do you see that, Doctor?
A. This is my third paragraph here, right?
Q. One more here.
A. Okay.

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Q. On Exhibit 3322, Doctor, that third full paragraph it says, "Cigarette smoking is the major cause of chronic obstructive pulmonary disease (COPD), the fifth leading cause of death in the United States."

Do you agree with that statement, Doctor, in the context of your practice here in St. Paul, Minnesota --

MS. MARTIN: Objection. Foundation.

BY MR. KAYSER:

Q. -- since 1974?

MS. MARTIN: Objection. Foundation.

THE WITNESS: I don't know how this is used in the context of the report.

BY MR. KAYSER:

Q. I'm talking about in terms of your practice.

A. My practice is somewhat more limited to diabetes so I would agree that it is an association that it is between -- there is an association between smoking and how people do in terms of their chronic obstructive pulmonary disease, but I don't know if I can say it's the fifth leading cause of patients dying in my office.

Q. Do you think there is a strong association between cigarette smoking and COPD in terms of your

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practice?
A. In terms of my practice, which is not predominantly pulmonary, my patient population is not a leading cause. However, I think there is an association -- a definite association.
Q. Drop down to the next paragraph if you would please, Doctor. Do you see where it says cigarette smoking increases the risk of respiratory infections? Do you see that?
A. No, I don't. Okay, I see it.
Q. Do you see that?
A. Yes.
Q. "Cigarette smoking increases the risk of respiratory infections such as influenza, pneumonia and bronchitis."
Based on your practice since 1974 in St. Paul do you agree or disagree with that statement, sir?
A. In terms of my practice, I think that cigarette smoking -- it has an adverse effect on respiratory -- on infections.
Q. Do you think it increases the risk of respiratory infections?
A. I guess you would have to say it increases the risk if it adversely affects it.
Q. Next paragraph says, "Cigarette smoking is a

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major cause of peripheral artery occlusive disease."
Based on your practice in St. Paul since 1974 do you agree with that statement, Doctor?
MS. MARTIN: Objection. Foundation.
THE WITNESS: In terms of how this is written in the context of the report, I don't think I can answer that.
BY MR. KAYSER:
Q. I'm asking you, Doctor, in the context of your practice, not in the context of this report. In the context of your practice --
A. But the statement is taken from a report, so --
Q. That's true, but I would like you to answer the question in the context of your practice.
A. I'm just making sure it's clear.
Q. Let me ask you the question again so we have a clean question and clean answer here.
Do you agree based on your practice in St. Paul, Doctor, that "Cigarette smoking is a major cause of peripheral artery occlusive disease?"
MS. MARTIN: Objection. Foundation.
THE WITNESS: In terms of my practice it is associated with peripheral artery occlusive disease.
BY MR. KAYSER:

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Q. Do you consider it a strong association?
A. Looking at defining my patient population of the patients I take care of, there are multiple causes of their peripheral vascular disease. Smoking is certainly one of the associated problems with this.
Those people that smoke that I follow, appear to have a higher incidence of peripheral vascular disease.
MR. KAYSER: I would ask the Court Reporter to mark this as 3323, Plaintiffs' Exhibit 3323.
(Plaintiffs' Deposition Exhibit No. 3323 - 1990 SG insert - marked for identification.)
BY MR. KAYSER:
Q. Doctor, I'm showing you what has been marked as Plaintiffs' Exhibit 3323 in this matter which is from the 1990 Surgeon General's report.
Taking the first paragraph and the last sentence, the last two lines in that paragraph, it says, "The 1982 Report concluded that cigarette smoking is a contributing factor in the development of bladder cancer."
Do you agree or disagree with that statement, Doctor, based on your practice in St. Paul since 1974?
MS. MARTIN: Objection. Foundation.

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THE WITNESS: I haven't read the report so I can't comment on the report in terms of my personal practice.

I've had as I recall only one person with bladder cancer that I've dealt with.

BY MR. KAYSER:

Q. You don't have any way of knowing whether that's correct or not correct?

A. Not my personal experience.

Q. Just above the word conclusion there is a sentence that says, "This diminution of risk after smoking cessation the hypothesis that smoking is a contributing cause of cervical cancer." Do you know if that's a true statement or not?

MS. MARTIN: Objection. Foundation.

THE WITNESS: No. That's out of my field.

BY MR. KAYSER:

Q. Doctor, you make general reference to Jay H. Stein, Internal Medicine Fourth Edition.

A. Okay.

Q. Have you relied on that volume from time to time in your practice, Doctor?

A. I use it as a reference book.

MR. KAYSER: I would like to have the

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Court Reporter mark this as Plaintiffs' Exhibit 3324.
(Plaintiffs' Deposition Exhibit No. 3324 - book excerpt - marked for identification.)
BY MR. KAYSER:
Q. Doctor, I'm showing you a page from the Fourth Edition Internal Medicine, Editor-in-Chief, Jay H. Stein, Exhibit 3324, which is the same reference you made on page 10 of your report, Exhibit 3318; is that right, sir?
A. Yes.
Q. And I'd like to have you drop down to the second full paragraph. This is the work that you apparently refer to from time to time in your practice; is that right, sir?
A. I use it as a reference book.
Q. Do you agree with the sentence, the first two sentences there that say, "The most important etiologic factor in lung cancer is cigarette smoke?"
A. I would not disagree with it in terms of etiology in there talking in terms of association.
Q. Do you agree with the second sentence on Exhibit 3324 that says, "Cigarette smoke contains many carcinogens?"
A. That cigarette smoking may contain carcinogens, but the specific components causing lung cancer are

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not known.
Q. Yes. Do you agree with that sentence?
A. Yes.
MR. KAYSER: I would like to have the Reporter mark this as Plaintiffs' Exhibit 3325.
(Plaintiffs' Deposition Exhibit No. 3325 - book excerpt - marked for identification.)
BY MR. KAYSER:
Q. Doctor, you've just been handed Plaintiffs' Exhibit 3325. Again, this is from the Fourth Edition, Internal Medicine, Editor-in-Chief, Jay H. Stein referred to in page 10 of your report, Exhibit 3318.
I'd like to have you turn to the last page of that document. It says on the left-hand column under epidemiology -- do you see where it says risk factors?
A. Yes.
Q. It says risk factors - and I quote - "tobacco smoking and age account for about eighty to ninety percent of the risk of developing COPD in the United States." Do you agree with that statement, Doctor?
MS. MARTIN: Objection. Foundation.
BY MR. KAYSER:
Q. The question is based on your experience as a

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practicing physician in St. Paul since 1974.
A. In terms of association of smoking to developing COPD, I think there is a strong association between smoking and COPD.
Q. Are you in any way qualifying the sentence that says, "Tobacco smoking and age account for about eighty to ninety percent of the risk of developing COPD in the United States?"
A. I don't know that I can separate the risk from smoking and the risk from age. There are two parts of this, one is the smoking, one is the age which account for eighty to ninety percent.
Again, all I'm saying is I think there appears to be a strong association.
Q. Between tobacco smoking and COPD?
MS. MARTIN: And age.
BY MR. KAYSER:
Q. Would you in any way qualify that sentence as it's written, Doctor? Let me start over again so you have a clean question and clean answer.
I'm referring now to Exhibit 3325 which is from the book Internal Medicine that you make reference to in your report.
Do you in any way qualify this sentence, "Tobacco smoking and age account for about eighty to

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ninety percent of the risk of developing COPD in the United States?"
A. I think that statement's been changed from the original one and because now we're talking about the book --
Q. I'll try it again. Based on your experience as a practicing physician in St. Paul since 1974 would you in any way qualify this statement, Exhibit 3325, that says, "Tobacco smoking and age account for about eighty to ninety percent of the risk of developing COPD in the United States?"
A. I would think that both smoking and age account for eighty to ninety percent of those patients with COPD.
Q. Thank you.
MR. KAYSER: I would like the Court Reporter to mark --
BY MR. KAYSER:
Q. I think I forgot what you said. Did you say you have only had one incident of bladder cancer in your practice?
A. As far as I can recall. It was my mother-in-law.
Q. Do you allow people to smoke in your office, Doctor?

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A. No.
Q. How long has your office been smoke-free?
A. Since the State of Minnesota has defined it as a --
Q. Pardon?
A. Since the State of Minnesota has defined it as illegal to smoke in an office in the medical setting.
Q. Was that the Clean Indoor Act of 1975?
A. I don't know.
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't think so because I think the hospitals have not been smoke-free since that long. I think it's probably in the late eighties, but I'm not sure.
BY MR. KAYSER:
Q. Do you allow people to smoke in your home?
A. I would prefer they didn't and ask them not to.
Q. How long have you done that?
A. Probably since I stopped smoking.
Q. And --
A. Which would be in the early seventies.
MR. KAYSER: I would like to have the Court Reporter mark this.
(Plaintiffs' Deposition Exhibit No. 3326 - newsletter - marked for identification.)

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BY MR. KAYSER:
Q. Doctor, the Court Reporter has just handed you Plaintiffs' Exhibit 3326 which is a Minnesota of Department of Health Disease Control Newsletter of May, 1983.
First of all, do you get these newsletters from the Department of Health on a regular basis as a practicing physician?
A. They seem to be rather intermittent.
Q. But you get them from time to time intermittently?
A. They show up from time to time.
Q. Do you read them?
A. I try to peruse them.
Q. Do you know whether in May, 1983 you got this newsletter?
A. I have no idea.
Q. If you'll look at smoking as a risk factor which is the -- towards the top of the page in bold letters. Do you see that?
A. Yes.
Q. The first sentence says, "Cigarette smoking is the single most important preventable cause of death today." Do you agree with that sentence, sir?
A. I think I have not read this, at least that I

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can remember, and in terms of taking this one sentence out of context, I don't know if I can do that.
Q. Well, let's not talk in terms of you may or may not have read the newsletter, but today as you're sitting here on the 15th of September, 1997, and the many accumulated years you've been in practice in St. Paul as a private physician, as you sit here today do you believe that cigarette smoking is the single most major preventable cause of death today?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't think I can answer that as defined.
BY MR. KAYSER:
Q. Why, you just do not know?
A. I don't know or -- the single most preventable cause of death.
Q. You don't know the answer?
A. I don't know the answer.
Q. Would you know how cigarette smoking rates as an important preventable cause of death, first, second, third or fourth --
MS. MARTIN: Objection. Foundation.
BY MR. KAYSER:
Q. -- based on your practice in St. Paul, Doctor?

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A. Based on my practice?
Q. Yes.
A. First of all, causality versus association, I think there is an important association in terms of cause. I don't think I can answer that because they're not talking about how it causes it.
In terms of my incidence in my practice, I have a selected group of people in my practice, and while smoking is important, it's not probably the most important association in my practice.
Q. When you say you have a selected group, can you define that for me please?
A. I have a relatively large incidence of patients with diabetes in my practice, so diabetes is an important contributing factor for their longevity.
Q. Do you have any diabetic patients who smoke?
A. Yes.
Q. Do you tell your diabetic patients to stop smoking?
A. Yes.
Q. Do you tell your diabetic patients that smoking may hasten their death?
A. Yes.
Q. Do you tell your diabetic patients their diabetes is going to become worse if they continue to

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smoke?
A. I don't know if you can say that.
MS. MARTIN: Let's take a five minute break here.
(Recess taken.)
BY MR. KAYSER:
Q. Doctor, I'd like to have you turn to page 9 of your report, Exhibit 3318. Just to let you know, there are a couple paragraphs there that when you talk about nursing home admission diagnoses generally do not accurately reflect the real reasons an individual is placed in a nursing home, and then it goes on, I'm not sure I understand why a nursing home admission diagnosis would not accurately reflect the reason a person was placed in the nursing home.
MS. MARTIN: Objection. Foundation.
MR. KAYSER: It's his report.
MS. MARTIN: But you said --
BY MR. KAYSER:
Q. Would you tell me why the nursing home admission diagnoses generally do not reflect the reasons a person is placed in a nursing home?
MS. MARTIN: Objection. Foundation.
THE WITNESS: My experience has been that nursing home patients need ICD patient codes,

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diagnostics for reimbursement expenses.

On the other hand, people are put in a nursing home on a related nursing home diagnosis.

People with Alzheimer's could be in a nursing home with a diagnosis of Alzheimer's, but in reality they're there because they need care maybe over and above what the family can deliver at home.

BY MR. KAYSER:

Q. Well, is the failure to reflect the real reason individuals placed in a nursing home is so that the nursing home can get reimbursement from some governmental agency for that admission?

MS. MARTIN: Objection. Foundation.

THE WITNESS: I can't answer for the nursing homes, but it would appear to me that they need to have a clinical diagnosis for reimbursement.

On the other hand, if the services could be rendered at home, they may not have to go to a nursing home.

BY MR. KAYSER:

Q. Just so I don't either misunderstand you or understand you, are you saying that physicians from time to time sometimes put down diagnoses in admissions that are not accurate simply to get reimbursement from the government?

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MS. MARTIN: Objection. Foundation.
THE WITNESS: No. I don't agree with that.
BY MR. KAYSER:
Q. Well, I'm not --
A. I think --
Q. I'm just trying to understand what you're telling me or what you're telling us.
A. I think the diagnoses are probably correct, but that may not be the issue why they're in the nursing home.
The issue being in the nursing home frequently is because the patient cannot be cared for outside the nursing home.
Q. Let's drop down to the last paragraph on page 9 of Exhibit 3318. It says, "With the exception of an occasional "failure to thrive," there is little in the admitting diagnoses that accurately reflects the true reason the individual requires nursing home care."
If you wanted to put down what you refer to as "the true reason," what would you put down?
A. I think that social circumstances make it in the majority of cases impossible for them to take care of the person outside the nursing home.

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Families can't take care of the person. There is no support system outside the nursing home setting that can provide those services.

So you may have a diagnosis of Alzheimer's, but the reason for that, not being taken care of at home, might be that the person is incontinent, can't be taken to the bathroom frequently enough without soiling himself. So they have to be in a nursing home for those reasons.

Q. But if you put down the true reason would the nursing home not admit the person? Is that the real issue?

A. I can't answer what nursing homes would do.

Q. I understand. But as a physician --

A. I would still refer them to the nursing home if they couldn't be taken care of in a home setting.

Q. Why would you not put that down as the diagnosis, that is the person is incontinent and can't take care of himself? Why would you not do that?

A. I might put that down. I'm not sure that's listed as a code they can get reimbursed under. It's a consequence of the diagnosis though.

Q. Let's turn to page 4 of Exhibit 3318. It talks about alcohol consumption, Doctor. You talk about

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the issues of alcohol consumption and other substance abuse that impacts disease outcome.

If you had a patient under your care who smoked two packs of cigarettes a day, had four or five drinks every night after work and came to you and said, I have a drinking problem and I'm smoking too many cigarettes, I'm going to keep one and give up one, what would you advise that person to give up, the drinking or the smoking?

A. That's a difficult question.

Q. Why?

A. Because they both adversely affect health.

Q. I understand that, but the patient has decided he will take your advice and give up one or another.

A. My advice --

MS. MARTIN: Object on the grounds it's a hypothetical.

BY MR. KAYSER:

Q. Right, it is.

A. Under the circumstances what I would tell that patient is they have to make a choice. They're making the choice, not me, and they have to decide which one they're going to give up. Both of them cause or have an ill effect on their health.

Q. And the patient says, Doctor, I'm going to make

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a choice and I'm talking to a number of people, but I'm coming to you as my personal physician, and I'd like to know what advice you would give me as your patient as to what to do, and I'm going to take a lot of factors into consideration, but I'm going to take your advice, Doctor, into consideration too because you are my primary care physician. So what should I give up, smoking or drinking?

MS. MARTIN: Object on the grounds of incomplete hypothetical.

THE WITNESS: Both.

BY MR. KAYSER:

Q. So that's what you would tell them, you would simply send them out with that advice?

A. I would tell them I can't make that choice for them; they have to make the choice. My advice to them is that they should stop both.

Q. And if the patient says, Doctor, I want to know which, the smoking or the drinking, has the most adverse impact on my health, and I recognize that I as the patient am going to have to make that decision and I will make that decision, but I need your advice. I'm willing to stop one and I need your advice as to which one has the most adverse impact on my health.

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MS. MARTIN: Objection. Asked and answered.
BY MR. KAYSER:
Q. What would your advice to the patient be?
A. This is highly hypothetical and in this hypothetical instance I don't think I can tell you any more than I already told you not knowing what other health factors are involved in this person that you've made up.
Q. Well, let's assume there are no other health issues, Doctor.
A. Then it's both.
Q. And that's the best you can do?
A. That's all I'll do.
Q. With respect to poor nutrition up on the top of page 4, Doctor, let's go back to our hypothetical person now who has a diet that's high in cholesterol and fat and smokes two packs of cigarettes a day and is willing to give up one.
What advice would you give to that person who loves his big snacks and --
A. What's his cholesterol?
Q. Say it's 285 and the bad cholesterol is not good either and he smokes two to three packs of cigarettes a day, and he comes to you for advice as his primary

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physician. Which would you tell him to give up?
A. I think I would tell him the same thing; with the high incidence of lipids and smoke, I would tell him to stop both.
Q. If the person insists I'm going to keep on with one of them and I need your advice --
A. I can give him advice, but he has to make the decision.
Q. Right. And he's going to make the decision, but he needs your advice between those two.
A. I would tell him to stop both.
Q. That's the best you can offer your patient?
A. I think that's pretty good advice.
Q. Doctor, let's turn to page 6. You talk about the interaction -- up at the top of page 6 on Exhibit 3318, the interaction between an individual environment is important.
How many of your patients in the last five years have been exposed to industrial pollution such as asbestos, what percentage?
A. It's a low percentage.
Q. Less than five percent?
A. Less than five percent.
Q. Less than three percent?
A. That's speculation.

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Q. Doctor, in the last five years what percentage of your patients have been exposed to radon?
A. I have no idea.
Q. Less than five percent?
A. I don't know.
Q. Let me put it this way --
A. I don't know of any.
Q. Over the last five years, Doctor, what percentage of your patients have been exposed to carbon monoxide?
A. What percentage?
Q. Yes.
A. Very little.
Q. Do you know of any?
A. I think I've been involved on a consulting basis on one or two that have had carbon monoxide.
Q. In the last five years, Doctor, how many of your patients have been exposed to arsenic?
A. Possibly one.
Q. In the last five years, Doctor, how many of your patients have been exposed to solar radiation?
A. Solar radiation?
Q. That's what I read here.
A. I would guess a fair number.
Q. A fair number. Can you put a percentage on

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that?
A. No.
Q. Less than --
A. Twenty-five to seventy-five.
Q. Percent?
A. Percent.
Q. And we're using solar radiation the way you're using solar radiation in this paragraph?
A. Being out in the sunshine.
Q. Is that the way --
A. That's what I'm referring to.
Q. Doctor, in the last five years how many of your patients have been exposed to vinyl chloride?
A. I don't know.
Q. Do you know of any?
A. Not offhand, no.
Q. In the last five years, Doctor, how many of your patients have been exposed to benzene?
A. I don't know of any.
Q. In the last five years, Doctor, how many of your patients have been exposed to ionizing radiation?
A. I don't know.
Q. In the last five years, Doctor, how many of your patients have been exposed to aromatic amines?
A. Offhand I don't know.

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Q. Do you know of any?
A. No.
Q. In the last five years, Doctor, how many of your patients have been exposed to polycyclic aromatic hydrocarbons?
A. I don't know.
Q. Do you know of any?
A. No.
Q. Doctor, over the last five years how many of your patients have been exposed to chromium and nickel?
A. I don't know of any.
Q. Down in the second paragraph, Doctor, in the last sentence, over the last five years how many of your patients have been exposed to mercury? We're still on page 6, Doctor.
A. One that I can think of.
Q. In the last five years, Doctor, how many of your patients have been exposed to dieldrin?
A. None that I know of.
Q. In the last five years, Doctor, how many of your patients have been exposed to methyl cholanthrene then?
A. None that I know of.
Q. And you may have answered this, Doctor, and if

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you did I'm sure your lawyer will let us know. I apologize if I'm being repetitive, but in the last paragraph you were talking about diabetes.
Is smoking particularly harmful to those people with diabetes?
MS. MARTIN: Objection. Asked and answered.
MR. KAYSER: I may have, but I can't remember the answer.
THE WITNESS: I don't remember the answer right offhand. Are you asking me a new question?
BY MR. KAYSER:
Q. Let me just ask you the question. We're extending this deposition beyond all belief. Is smoking at this point particularly harmful to diabetes?
MS. MARTIN: Objection. Foundation.
MR. KAYSER: This is a man who treats diabetes.
THE WITNESS: I tell my patients with diabetes to stop smoking because it is not helpful for them, yes.
BY MR. KAYSER:
Q. Is smoking more unhealthy for diabetes than

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somebody without diabetes?
A. I think it is a contributing factor in their health or unhealth.
Q. Well, I understand you think that across the board. Let's see if we can isolate diabetes from non-diabetes.
Is smoking more harmful to diabetics than non-diabetics?
A. Not that I know of, but I don't know.
Q. Let's turn to page 7 of Exhibit 3318, Doctor.
MR. KAYSER: Off the record.
(Discussion held off the record.)
BY MR. KAYSER:
Q. Doctor, I'd like to have you refer to page 7 of your report, Exhibit 3318. Now, we're going to start talking about some specific individuals who apparently you viewed the depositions of those folks.
A. All right.
Q. Hypertension, is that high blood pressure, Doctor?
A. That's how it's defined.
Q. And high blood pressure leads to stroke; is that correct, Doctor?
A. It could.
Q. Is high blood pressure substantially associated

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with strokes?
A. Yes.
Q. Is there a strong linkage between high blood pressure and strokes?
A. Yes.
Q. Are people with high blood pressure and who are smokers at an increased risk to have a stroke because of their smoking?
A. Smoking can adversely affect blood pressure.
Q. Which would lead to stroke; is that correct, Doctor?
A. It could.
Q. Have you found that to be the case in your practice over the years?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I'm trying to recall. Certainly there are patients in my practice who have had high blood pressure who have had strokes.
There are patients in my practice who had smoked and got high blood pressure and had strokes. There is a statistical linkage between --
BY MR. KAYSER:
Q. With respect to recipients 8, 13 and 15 in the first paragraph, page 7, Exhibit 3318 --
A. I would have to --

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Q. -- would you advise those recipients to stop smoking?
A. What recipients?
Q. 8, 13 and 15.
A. I would have to take a look at those recipients. If you want me to -- if you want me to specifically answer in terms of these people specifically or in general how, I would tell anybody to stop smoking.
Q. I'm just asking you whether these particular recipients with hypertension. Would you advise them to stop smoking?
A. I would tell anybody with hypertension to stop smoking.
Q. In the second paragraph you're talking about the HIV positive individuals.
A. Yes.
Q. Would you advise recipients 1 and 11 to stop smoking?
A. I would tell any patient to stop smoking.
Q. So you would tell any patient that you have to stop smoking?
A. Yes.
Q. For health reasons?
A. Yes.
Q. Is pulmonary fibrosis aggravated by someone who

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is smoking?
A. I don't think there -- go ahead.
Q. Go ahead. Let me give you a clean question. Someone who has pulmonary fibrosis, could that condition be aggravated if that person smokes?
A. Pulmonary fibrosis?
Q. Yes.
A. I don't think so.
Q. It wouldn't make any difference?
A. I don't think pulmonary fibrosis is related to smoking per se.
Q. But someone who has pulmonary fibrosis and smokes, is that pulmonary fibrosis aggravated by the smoking?
A. Not that I know of.
Q. Doctor, over the years as you've advised patients to stop smoking have they told you the various reasons they smoke and tried to rationalize why they smoke?
A. Yes.
Q. Have they ever told that you there is no evidence that smoking causes lung cancer or other diseases?
A. I cannot think of anybody that's used that as a definite reason for stopping smoking.

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Q. Have your patients tried to rationalize why they smoke and why they don't stop smoking?
A. Yes.
Q. What are some of the reasons that they've used?
A. Because too much stress on them to stop, too much demand on them, they're too nervous to stop, they don't care. But I can't think of anybody who says I don't think it's good for me.
Q. Have any of the patients ever come to you and said, you know, the tobacco companies say that smoking doesn't cause these diseases, so I'm not sure?
A. No, I don't think they ever say that.
Q. Nobody's ever said that there is just no scientific evidence about this?
A. I've had people come in and say I don't -- that nobody's shown how it's caused. I've had that happen.
Q. So they've rationalized their smoking by saying that since nobody knows the cause of it --
A. I can't answer that how that is turned over into they're not smoking, but I think I've had patients say that they don't know --
Q. So they continue to smoke on that basis?
A. They continue to smoke.

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Q. Have you read over the years any literature published by the cigarette companies about smoking and the controversy about smoking?
A. No.
Q. Would you agree with me that a manufacturer of a product is likely to know more about that product than somebody else?
A. I don't know if I can answer that. I don't know.
Q. You don't have any idea?
A. No.
Q. Through your career as a physician in St. Paul since 1974 have you had men and women come to you from drug companies explain various drugs, medical devises to you?
A. Yes.
Q. Do you assume that they're telling you the truth about those drugs and medical devises when they come to talk to you?
A. I would hope that they're telling me the truth.
Q. Would you be appalled if a man or woman comes and tries to sell you a drug if they knew it would harm your patients and didn't tell you about that harm?
A. I would hope that they would tell me the truth.

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Q. Would you be appalled if they didn't tell you the truth?
A. Maybe I'm cynical, but I'm never appalled.
Q. Do you believe a manufacturer has a duty to study the health effects of its products?
A. Yes.
Q. Do you believe a manufacturer has a duty to warn the public about the adverse effects of its products?
A. Yes.
Q. Did you ask to see any internal documents of any of the cigarette companies that hired you in this matter to talk about to see what they had about their own products?
MS. MARTIN: Object to form and foundation.
THE WITNESS: I was not hired by the smoking companies, I was hired --
BY MR. KAYSER:
Q. Did I say the smoking companies?
A. I was asked to review specific cases by the two law firms represented here to look at specific cases, so --
Q. Well, you submitted a bill for your services, did you not, sir?
A. Yes.

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Q. And do you have any doubt that the cigarette companies are paying your bill?
A. My checks come from Carol Bron's group.
Q. Who?
A. Carol Bron, Shook, Hardy.
Q. Do you have any doubt that the cigarette companies are ultimately paying your bill?
A. I'm sure they're paying the legal firms that are --
Q. But the bill that you've submitted, is there any doubt in your mind the cigarette companies are paying that?
A. I'm sure they're paying indirectly.
Q. So you have been hired by the cigarette companies to testify in this case?
A. Well, I have been asked to review certain cases by the legal counsel.
Q. But you understand the cigarette companies are paying your fees, don't you?
A. They're paying the legal counsel.
Q. Who are paying you, right?
A. I would assume.
Q. But is there any doubt in your mind that the cigarette company is ultimately paying the bill that you have submitted?

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A. Indirectly.
Q. Through the lawyers?
A. Through the lawyers.
Q. Let me ask you again. I'm not sure I got an answer.
A. First half.
Q. Say that again?
A. The first half.
Q. The first half?
A. You were answering that question.
Q. Did you review any internal documents of the cigarette companies before you made your report which is Exhibit 3318?
A. No.
Q. Did you ask to see any internal documents of the cigarette companies before you made your report?
A. No.
Q. Since you have been employed in this case, Doctor, have you read any newspaper articles about the tobacco litigation that's going on in this country?
A. In general, yes.
Q. Have you read in the Minneapolis or St. Paul papers in the last two weeks about some documents that the tobacco companies are saying are protected

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by the attorney-client privilege, but which may be revealed through these court proceedings?
A. No.
Q. Since you have been employed in this litigation, Doctor, have you talked to any executives or employees of the cigarette companies about your report?
A. No.
Q. You've only talked to the attorneys and people from Shook, Hardy that you have mentioned to me before?
A. That's correct, and Doherty, Rumble.
Q. I'm sorry?
A. And Doherty, Rumble, but --
Q. Do you believe over the years that the statements by the cigarette companies about cigarette smoking not causing various diseases have been complete and truthful?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I haven't read the statements. I haven't seen them.
MR. KAYSER: Well, it's about 1:15. We're about to jump into a new area. Why don't we break for lunch.
(Recess taken.)

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BY MR. KAYSER:
Q. Doctor, I want to show you what has been marked previously as Plaintiffs' Exhibit 304.
A. Do you get this back?
Q. Yes. Showing you what has been marked as Exhibit 304 in a previous deposition, as you can see it's a report on visit to the United States and Canada.
Do you see the itinerary briefly on the second page as to where the folks went?
A. Yes.
Q. If you look now at page 2, the next page, where it says causation of lung cancer. Do you see where it says, "With one exception (H.S.N. Greene) the individuals whom we met believe that smoking causes lung cancer if by "causation" we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link." Do you see that?
A. Yes.
Q. Are you comfortable with that sentence? Would you agree with that sentence?
A. I think in terms if they're using this as an association from the standpoint of statistical association, yes.

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Q. Keep in mind that this comes from one of the defendants in this case. Turn to page 3, Doctor. Take a look at the extrapolation from animal tests to man.
A. Why?
Q. "The human epidemiological data add up to reasonably convincing case that tobacco smoke is weakly carcinogenic to the human lung." Do you agree with that statement, Doctor?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know how that is made or the context it's made, how they're saying causation.
BY MR. KAYSER:
Q. And you see paragraph 3 there, "Although it undoubtedly differs in detail, the mechanism of carcinogensis is likely to be basically similar for all tissues in all animals." Do you agree with that?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know if I could comment on that. I don't know. I'm not --
BY MR. KAYSER:
Q. You just don't know?
A. I don't know.

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Q. Is this the kind of information that an internist would like to have known back in the late fifties or early sixties between what the cigarette companies knew about the link between smoking and cancer so that they would be able to tell that to their patients?
A. I don't know if knowing what cigarette companies knew would make any difference.
Q. Do you think that would have given you a little different weapon to use with your patients in order to convince them to stop smoking?
A. Possibly.
Q. Doctor, let me ask you this: We talked before about do you think that a manufactured product knows more about that product than anybody else and I don't recall your answer. Can you tell me what that was?
A. I think if I recall correctly I said that I don't know.

MR. KAYSER: Why don't we have the Court Reporter mark this.

(Plaintiffs' Deposition Exhibit No. 3327 - transcript excerpt - marked for identification.)

BY MR. KAYSER:
Q. Doctor, the Court Reporter has just handed you Exhibit 3327 which is the testimony of a gentleman by

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the name of Lebow, Bennett Lebow, in a lawsuit in Florida. The date of his testimony is July 21, 1997.
MS. MARTIN: Counsel, there isn't anything on the exhibit itself that says it's Mr. Lebow's testimony, is there?
MR. KAYSER: I will represent to you I took it from Mr. Lebow's testimony. I can't give you this because it's all marked up, but I will represent to you it came from that and I will represent that to you.
MS. MARTIN: Okay.
BY MR. KAYSER:
Q. Doctor, if you'll turn to page 4. First of all, I think it's fair to say according to Mr. Lebow's testimony that he is the majority shareholder of the Brooke Group which is the one hundred percent owner of Liggett Tobacco Company.
Mr. Lebow is representing or is testifying to this in court, Doctor. He is the hundred percent -- the majority shareholder of the Brooke Group which is one hundred percent owner of Liggett Tobacco Company which I believe is one of the cigarette companies in this action that has hired you, Doctor.
If you'll look at page 4, the bottom of the page, "Mr. Lebow, does cigarette smoking cause lung

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cancer heart and vascular disease and emphysema."
His answer is yes. Do you see that?
A. I do.
Q. Now, considering that Mr. Lebow is the owner of a cigarette company and one of the defendants in this case that has hired you, Doctor, does that change your view at all that cigarette smoking causes lung cancer, heart and vascular disease and emphysema?
A. No.
Q. And Doctor, if you could turn to page 34 and 35 of --
MR. KAYSER: If you would mark this.
(Plaintiffs' Deposition Exhibit No. 3328 - transcript excerpt - marked for identification.)
BY MR. KAYSER:
Q. Hopefully, Doctor, you have before you Exhibit 3328, pages 34 and 35 of Mr. Lebow's testimony.
MR. KAYSER: Betsy, just to assure you, I'm showing you the full transcript and pages 34 and 35.
BY MR. KAYSER:
Q. Keeping in mind again that Mr. Lebow is the owner of one of the cigarette companies that has hired you in this case, Doctor, if you would take a look at the question on the bottom of page 34, top of

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page 35.
Do you see the CEO and chairman of the company I believe believes there is no controversy, but that cigarette smoking causes lung cancer and other diseases?
Does that in any way influence your opinion with respect to your testimony in this matter?
A. No.
Q. Let's go back to the previous exhibit if we might, Exhibit 3327. I think there is a page 7 in there.
If you look on page 7, Doctor, lines 22 through 24. Mr. Lebow is testifying, "Yes, we believe for many people smoking cigarettes is very addictive." Do you see that?
A. Line 21, 22 and 23?
Q. Yes. Again, Mr. Lebow is chief executive officer of one of the defendants in this matter.
Do you agree with his statement that for many people cigarette smoking is very addictive?
A. I think that as I've said before that it's very difficult for people to stop smoking and how you define addictive is hard for me to define. I'm not sure how he's defining it.
Q. Using your definition of addictive, Doctor.

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A. I think a difficulty to stop using possibly because of physical symptoms, whatever they may be.
Q. Do you think cigarette smoking operates on the physical side of someone and makes it difficult for them to stop smoking?
A. Yes.
Q. Do you know that?
A. Do I know that it can cause physical symptoms?
Q. Yes.
A. It's reported to do that.
Q. Do you believe as a physician that cigarette smoking causes physical symptoms?
A. It could.
Q. Do you know of any of your patients it has?
A. I think there is some patients who have had some symptoms with stopping smoking.
Q. Do you believe that some of your patients have been addicted to cigarette smoking?
A. Under that definition, yes.
Q. Under your definition.
A. Yes.
Q. Doctor, I show you what has been marked previously in these depositions as Plaintiffs' Exhibit 1049.
Doctor, as you can see the date of this is on

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November 2, 1959, and this is one of the documents produced by R.J.R., one of the cigarette companies that's hired you in this matter.
Do you see in the third paragraph where it says nevertheless --
A. Mm-hmm.
MS. MARTIN: Or nonetheless?
BY MR. KAYSER:
Q. You're right. Nonetheless. Anyway, we know what we're looking at. Is this the kind of information, Doctor, if you had been practicing medicine in St. Paul in 1959 you would like to have known from the R.J.R. Company, makers of cigarettes?
MS. MARTIN: Objection to foundation.
THE WITNESS: In terms of the context of this, I have a hard time saying where it came from. Other than the statement I think was derived -- I think the derived information is smoking on health would have been unhealthy for anybody.
BY MR. KAYSER:
Q. Just assuming that it says lung on the side here. We can barely make that out. It says produced by R.J.R. so this information was in the domain and in the custody of a cigarette manufacturer. Do you see that?

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A. I understand.
Q. Would this have been helpful if this information were known to internists had you been practicing medicine in 1959?
MS. MARTIN: Objection, incomplete hypothetical.
BY MR. KAYSER:
Q. If you had this information available to you might it had assisted you if you had been practicing medicine in 1959 and advising your patients with respect to the perils of smoking?
A. It might have.
Q. Would you have used that information if you had had it and were practicing medicine at that time with your patients?
A. I don't know.
Q. You do want to give your patients up-to-date information, don't you, Doctor?
A. Absolutely. Yes.
MR. KAYSER: I'll have the Court Reporter mark this as Plaintiffs' Exhibit 3329.
(Plaintiffs' Deposition Exhibit No. 3329 - BATCo. document - marked for identification.)
BY MR. KAYSER:
Q. Doctor, I'm showing you what has been marked as

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Plaintiffs' Exhibit 3329 which also has Bates number 100159219.

You will note that it's a document dated the 22nd of May, 1962. Again, it's produced by one of the defendants in this matter.

If you look at the second page, sir. If you look at the third paragraph, the first sentence, "The accumulating evidence for the influence of smoking on health now clearly threatens the future of the Industry. The evidence for the causal influence of smoking on lung cancer rests largely on statistical epidemiological studies and by more general consideration against the whole background of medical science."

The last sentence says, "The statistical evidence will become stronger year by year."

A. Where on this page are you?

Q. The third paragraph --

MS. MARTIN: The fourth paragraph.

BY MR. KAYSER:

Q. I'm sorry. You're absolutely right.

A. Okay.

Q. Doctor, as you can see one of the defendants is concerned about the accumulating evidence and the possible threat to the future of the industry. Do

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you understand that?
A. I understand what you're saying.
Q. Do you understand what the writer of the document is saying?
A. Well, I'm not sure I can -- in terms of -- well, in terms of this paragraph I would say that may be the case.
Q. And do you think that that threat to the industry, that perceived threat to the industry, is something the industry should have discussed publicly with respect to the link of cigarette smoking and disease being a threat to the industry?
MS. MARTIN: Object to the form.
THE WITNESS: I don't think I can comment.
BY MR. KAYSER:
Q. If you were a practicing physician at that time in 1962 would you have liked to have known that information to be able to discuss that with your patients?
A. I don't know if this statement would influence how I discuss smoking with my patients.
Q. Would you have told your patients that the cigarette industry itself is concerned as of that time with the -- with a threat to its survival

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because of the health concerns of cigarette smoking?
A. Do you want to restate the question?
Q. I'll re-ask it for you. Had you been a practicing physician in 1962 and knowing then what you know now would it have been helpful for you to know that a member of the cigarette industry felt that the health concerns of smoking of becoming public were a threat to the industry? Would you have used that information?
A. I don't know if I can say how I would have used it thirty years ago.
Q. How would you use it today if you knew that; if you had an internal company document that was concerned about the threat of the survival of its industry because of the health concerns of smoking being known to the general public would you want to use that information to your patients?
A. If I had access it might be helpful.
Q. Might it help you in convincing your patients to stop smoking for health reasons?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know if it would make any difference for my patients.
BY MR. KAYSER:
Q. Is that because your patients are so addicted to

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smoking they can't stop smoking?
A. I can't answer that. I don't know.
Q. You started out by saying that you agreed when your patients come to you they are kind of betting their good health, your advice on their life, and I think it's fair to say that patients come to physicians seeking advice about their health.
Are you telling me they don't take your advice?
A. I think this could -- that they're going to take my advice. I don't know if this would have to be put in the context in terms of an overall -- that statement of advising to them. So this may be part of used in context.
Q. Would you agree that the more information you have about how dangerous cigarettes are would be useful to your patients in talking to them about smoking cessation?
A. I don't know how they would respond to that. I think it could be used as part of an overall statement of advice.
Q. Would it be helpful for you to know that so you could advise your patients?
MS. MARTIN: Object to the form. Know what?
THE WITNESS: Well --

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BY MR. KAYSER:
Q. Doctor, the more information that you have about the linkage between cigarette smoking and disease, the more helpful it is to you in discussing those issues with your patients; isn't that correct?
A. Yes.
Q. It doesn't make any difference where you get that information, does it, just as long as you have it?
A. That is as long as it's accurate.
Q. As long as it's accurate. And to the extent that information is suppressed and that you don't have that, then the final analysis could be harmful to your patients; isn't that right?
A. Landing of information might be helpful.
Q. Well, presumably if physicians had known about the health risks to pregnant women had fortified earlier we might have saved a lot of heartache with respect to malformed children; isn't that right?
MS. MARTIN: Object. No foundation.
THE WITNESS: I don't know if I can comment about that statement. I don't know what the circumstances were at the time.
BY MR. KAYSER:
Q. I understand you don't know what the

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circumstances were at the time, but let's just take the statement by itself.
A. The statement by itself I would have to agree with it.
Q. I'm handing you what has been marked previously as Plaintiffs' Exhibit 506 in this litigation, Bates number 105383330.
This has also been produced, Doctor, from one of the defendants in this matters who has hired you to testify in this case.
I'd like to have you look at page 3. Do you see where it says safer cigarette?
A. Yes.
Q. Do you see the third sentence there where it says, "The epidemiological evidence showed clearly that cigarette smoke caused lung cancer?"
A. I can see it, yes.
Q. Now, this document is dated in February of 1964. Is this the kind of information that as a physician you would like to have known as in the --
A. I think I would liked to have known the whole statement, not just this one sentence, so I could put it in context.
Q. What whole statement?
A. How they came to that conclusion.

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Q. Well, you've agreed before that epidemiology is a legitimate respected part of --
A. Yeah, but I'm not sure when they're talking about causality here --
Q. You have agreed that epidemiology is a respected part of science, have you not?
A. Yes.
Q. And this is from a cigarettes company talking about the epidemiological evidence. As a physician would you have liked to have known about this information being in the custody of a cigarette company, they knew this information as you were treating this patient, if you had been treating your patients in 1964?
MS. MARTIN: Objection. Incomplete hypothetical.
THE WITNESS: I think would I have liked to have known? Again, I think whatever information I can have about health care is important. How this particular statement fits into the context, I'm not sure.
BY MR. KAYSER:
Q. Well, it comes from one of the cigarette manufacturers. One of the cigarette manufacturers has this information. Epidemiological evidence

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showed clearly that cigarette smoking caused lung cancer.
As you were talking to your patients, either those who might smoke or who were wanting to stop smoking, if you had known the cigarette industry had this information would you have liked to have known this to pass on to your patients?
MS. MARTIN: Objection, hypothetical.
THE WITNESS: I think the evidence for their association between smoking and lung cancer might have been helpful.
BY MR. KAYSER:
Q. Might it have been helpful in getting your patients to stop smoking?
A. It might have been. That's speculative in how effective it might have been.
Q. But you as a treating physician would liked to have had that information; is that right, sir?
A. It might have been helpful.
MR. KAYSER: I would like to have the Court Reporter mark this as Plaintiffs' Exhibit 3330.
(Plaintiffs' Deposition Exhibit No. 3330 - BATCo document - marked for identification.)
BY MR. KAYSER:

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Q. Doctor, I've given you Plaintiffs' Exhibit 3330 which is Bates number 105453524.
MS. MARTIN: Hold on a second. Off the record.
(Discussion held off the record.)
BY MR. KAYSER:
Q. Doctor, you have in your hands Plaintiffs' Exhibit 3330. Why don't you read that first page in that with the exception of the footnote.
A. So page 712 and the next page?
Q. The first paragraph of the next page.
A. Okay.
Q. Turn back to the first page please, Doctor. First of all, you'll note that this document comes from one of the tobacco companies that hired you in this matter.
We can see it's the sixties because it refers in that footnote to a report from 1962 and the Surgeon General's report of 1964, so we believe it to be sometime in the sixties.
You see where the first two paragraphs reflect the evidence linking smoking to lung cancer? The second paragraph says, "There is a definite and undeniable positive association between tobacco smoking, especially of cigarettes, and lung cancer."

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Do you think the company had an obligation to disclose this information to the public in the 1960s, Doctor?

MS. MARTIN: Objection.

THE WITNESS: I think you're asking me a philosophical question about this.

BY MR. KAYSER:

Q. I'm asking you as a physician who treats the people who are sick and has had patients die of diseases which you think are tobacco related.

And I'm asking also as a doctor in practice in St. Paul since 1974 and who has prescribed a lot of drugs and knows the problem of unsafe drugs on the market other than tobacco.

So with that background as you're sitting here in September, 1997 do you think the cigarette companies had an obligation back in the sixties to disclose this information?

MS. MARTIN: Objection. Asked and answered. Objection. Foundation.

BY MR. KAYSER:

Q. Go ahead.

A. I don't know if they have an obligation to. I think that may be a moral or legal obligation. I think it would have been nice information.

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Q. Nice information to be disclosed to the public?
A. Yes.
Q. Well, Doctor, taking away from cigarettes for just a moment. When a man or woman comes to you and talks to you about a drug on the market, you expect them to tell you the truth about the drugs; is that right?
A. I do.
Q. You don't expect a man or woman from a drug company knowingly to place an unsafe drug on the market that is going to harm your patients, do you?
A. I would hope not.
Q. So you would assume the drug company would get all the information that it knows to you and to the public about a particular drug, wouldn't you?
A. I would hope so.
Q. Would you expect the cigarette companies over the years to do the same thing about the health risks of their products?
A. I don't know if they would.
Q. But should they have the same obligation that the drug companies have --
MS. MARTIN: Objection. Foundation.
BY MR. KAYSER:
Q. -- that you've just talked about?

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A. I don't know what their obligation is.
Q. You just told me that a drug company has an obligation to tell the public and physicians about unsafe drugs, isn't that right?
A. Yes.
Q. Do you think there is any lesser duty on the part of the tobacco companies manufacturing cigarettes to make known to the general public the hazards of the cigarettes?
A. I don't know what they're responsible for in terms of health in the sixties.
Q. Do you think in the 1960s the cigarette companies had a lesser duty to tell the public about the health risks of cigarettes than the drug companies did about the health risks of other drug products?
A. I don't know what the responsibility was or --
Q. Do you think that the cigarette companies have a lesser obligation to tell the public about the health dangers of smoking than a drug company had to tell the public about unsafe side effects of a drug?
MS. MARTIN: Objection. Asked and answered.
THE WITNESS: I think I've answered that.

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BY MR. KAYSER:
Q. As you'll note in the second paragraph, the last sentence which is underlined in the document, "From the point of view of present day public health there can be no question that people should be encouraged not to smoke." Do you see that, Doctor?
A. Yes.
Q. Now, you are in the health field and have been since 1974, correct?
A. Yes.
Q. And the health of your patients is something I assume is very dear to you, correct?
A. Yes.
Q. And extremely important to you; isn't that right?
A. That's correct.
Q. If had you been a practicing physician in the sixties when Exhibit 3330 was being written you would have still felt very strongly about the health of your patients, would you not?
A. I think so.
Q. Would you like to have known this information as was known to the tobacco companies at that time; that is that from the point of view of present day public health there can be no question that people should be

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encouraged not to smoke?
A. I think that this statement standing alone is -- I cannot argue with it in terms of how it fits in with the rest of the report. I don't know that.
Q. But you agree that that statement standing alone is something that a tobacco company should have made public?
A. I don't know whether they're obligated to make it public or not. The statement stands for itself.
Q. Doctor, let's remove this from the tobacco companies now since I recognize your relationship with the tobacco companies, but talking about just for the moment a drug, not cigarettes.
If a drug company internally had this information, say it has this information today. Say a drug that you prescribe for your patients and the drug company has this statement, "from the point of view of present day public health there can be no question that this drug will harm people."
Now, that's not what's in this exhibit, but let's assume the drug company had that information. Would you expect that drug company has an obligation to tell you that?
A. I think drug companies should have an obligation.

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Q. Do you think a tobacco company in the 1960s has a lesser obligation with respect to health than the drug company does?
MS. MARTIN: Objection. Asked and answered.
THE WITNESS: I don't know if the drug company and the tobacco industry have the same obligation, particularly back in the 1960s.
BY MR. KAYSER:
Q. Could you tell the court and the members of the jury why that is, Doctor?
MS. MARTIN: Object to the form. Why what is?
BY MR. KAYSER:
Q. Do you understand the question?
A. Maybe you could restate the question.
Q. Doctor, perhaps you can tell the court and members of the jury why you're not sure the tobacco companies and the drug companies have the same obligation of the products?
A. I think this is speculation on my part. I don't know if the FDA regulating the drug in their requirements to divulge this sort of information is the same as what the tobacco industry was held to at the time.

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Q. So as far as you're concerned then it's a legal issue as opposed to a moral issue; is that right?
A. Yes.
Q. From the standpoint of a treating physician whose patients depend on you for their life and their health, if you had been practicing medicine in the 1960s would you liked to have known that, "from the point of view of present day public health there can be no question that people should be encouraged not to smoke."
Doctor, if you had been practicing in the 1960s would it have been important to you to know that someone in one of the tobacco companies had written a statement, "from the point of view of the present day public health there can be no question that people should be encouraged not to smoke?"
A. I think whatever information, as I've stated before, it would be helpful. It would be nice to know.
Q. And that's all, it's just nice to know?
A. It might even be helpful to know.
Q. Would it have been helpful for you to know counseling your patients?
MS. MARTIN: Objection. Are we still back in 1962?

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BY MR. KAYSER:
Q. If you had been a doctor in the 1960s.
A. I might have been able to use the information.
Q. Would it have been important for you to know that, Doctor; that there was discussion of the tobacco companies that from the point of view of the present day public health there can be no question that people should be encouraged not to smoke? Would that have been important in talking to your patients if you had been a doctor back then?
MS. MARTIN: Objection to the form. Hypothetical.
THE WITNESS: I think it's hypothetical and speculative.
BY MR. KAYSER:
Q. It is those things, but can you tell me if it would have been helpful?
A. It might have been.
Q. Could you tell me the --
A. I don't know the --
Q. Would you have felt more comfortable knowing the information as a physician?
MS. MARTIN: Objection, hypothetical.
THE WITNESS: Again, I think it would be nice to know that information.

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BY MR. KAYSER:
Q. Do you see the last sentence on that page, Doctor, first page?
A. Yes.
Q. It says, "In the absence of the smoking habit, in particular of the cigarette smoking habit, the lung cancer death rate in the community would be a small fraction of its present level." Do you see that?
A. Yes.
Q. Now, that information was known to one of the defendants in this matter in the sixties. Do you think that that defendant should have publicized that information?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't think I can comment about what he should have published and shouldn't have published in the 1960s.
BY MR. KAYSER:
Q. If you had been a treating physician with patients in the 1960s do you believe that the cigarette companies should have published the last sentence of Exhibit 3330?
MS. MARTIN: Objection, form and foundation.
THE WITNESS: Again, I think it would

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have been nice to know this information.
BY MR. KAYSER:
Q. If you had been a treating physician would it have been important for you to know that one of the tobacco companies felt that the absence of the smoking habit, in particular of the cigarette smoking habit, the lung cancer death rate in the community would be a small fraction of its present level?
MS. MARTIN: Same objection.
THE WITNESS: I think I would answer it the same as I've answered the other questions.
BY MR. KAYSER:
Q. If you would, do it one more time. I would appreciate it. It would have been nice to know?
A. Yes.
Q. Would you turn the page please, Doctor? Forget that Doctor. We're done with that exhibit.
Exhibit 507, Doctor, showing you what has been previously marked as Plaintiffs' Exhibit 507 in this litigation.
You'll note that this document is dated in June of 1967. This is from the Tobacco Research Council. I think that the Tobacco Research Council is one of the defendants in this matter, but I'm not positive.
In any event, the Tobacco Research Council, do

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you see the third page, the third paragraph? It's a little hard to read.
A. Where?
Q. Third paragraph.
A. I'd say about half of mine is legible.
Q. You can't make that out?
A. With some difficulty.
Q. Can you make out enough of it to see that they're talking about smoking has proved to be a cause of lung cancer?
MS. MARTIN: Object to the form. I think you're taking four words out of a twelve line sentence.
BY MR. KAYSER:
Q. Do you see where it says the Council's senior scientists accept the causation theory? Do you see that, Doctor? Can you read that much of it?
A. About half of it is gone on my page. You may want to read it to me.
Q. Can you read the part smoking has been proved to cause lung cancer? You can read that, can't you?
A. I can read that.
Q. A couple of lines down it says in addition, Council's senior scientists accept the causation theory.

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A. I can read that, yes.
Q. Do you think in 1967 the Tobacco Research Council had an obligation to the public to publish that information?
A. I have no idea.
MS. MARTIN: Objection. Foundation.
BY MR. KAYSER:
Q. If you had been a treating physician with patients in June of 1967 would that information have been helpful to you; that is if the Tobacco Research Council had that information in convincing your patients to stop smoking would that have been helpful to you?
MS. MARTIN: Objection to the form.
THE WITNESS: This is taking one line out of a numerous page report, and I don't know how this fits into the rest of the report, so I don't know if I can adequately answer that.
BY MR. KAYSER:
Q. Again, we have established the drug companies have an obligation to report to the public about the harmful effects of its drugs.
Do you think in 1967 the tobacco companies had the same obligation?
MS. MARTIN: Objection, asked and

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answered.
THE WITNESS: I would answer it the same way I have before.
BY MR. KAYSER:
Q. Could you do it again?
A. I think it would have been nice to know this information.
Q. Do you think the tobacco companies had the obligation to make the information available as the health --
A. I don't know as opposed to the drug companies who are governed by the FDA, so I can't --
Q. So your answer is based on the FDA requirements; is that right?
A. I think so.
MR. KAYSER: If you'll mark this as Exhibit 3331. Let's take a break.
(Plaintiffs' Deposition Exhibit No. 3331 - BATCo document - marked for identification.)
(Recess taken.)
BY MR. KAYSER:
Q. Doctor, you have in front of you Plaintiffs' Exhibit 3331 which, if you can look on the next page quickly, the last writing you can see was the 1967 document produced by one of the defendants in this

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litigation.

Do you see in the first paragraph it says, "Cigarette smoke affects the respiratory epithelium by direct contact, it is desirable that manufacturers should adopt the policy of taking such steps as are practicable to reduce these effects?" Do you see that?

A. I see it, yes.

Q. Do you think that the cigarette company who has this information should have made it available to the public in 1967?

A. I think I've answered this. Same as the above statements, I don't know what their obligation is.

Q. Doctor, I recognize some of these questions you feel you've answered, but when we come to a new document, we don't know how these documents are going to be handled at trial so I don't know what questions are going to be asked and in what order, so we do need to ask these questions this way.

So let's go back to the first sentence of Exhibit 3331 where it says, "Cigarette smoke affects the respiratory epithelium by direct contact, it is the desire that manufacturers should adopt the policy of taking such steps as are practicable to reduce these effects."

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Do you think that the cigarette company that has this information has an obligation to make this public in 1967?
A. First of all, I'm not sure that that statement is taken out of context. It's just not even the complete statement; TRC's own working hypothesis, I don't know who they are.
Q. Tobacco Research Council.
A. Again, I think it would probably be nice information to know. What their obligation is to report this, I don't know.
Q. Do you think any manufacturer who deals with the public and affects the public health has the obligation to tell the public everything about that product, the adverse consequences particularly?
MS. MARTIN: Objection. Foundation.
THE WITNESS: From a legal standpoint I don't know what their obligation is.
BY MR. KAYSER:
Q. What do you think their obligation is from a moral standpoint, Doctor?
A. I think it would be nice to know.
Q. Just nice to know or do they have a moral obligation to do it?
A. I think that they -- from a moral standpoint

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that could be defined in multiple context. Depending on what your background is, my feeling is that I would like to know that information.

Q. Just from your background, from your personal background, as you've made judgements on moral issues as an adult do you think the tobacco companies had a moral obligation in the 1960s to tell the public adverse information with respect to cigarette smoking?

MS. MARTIN: Objection, hypothetical.

THE WITNESS: I don't know how I would answer that in the 1960s.

BY MR. KAYSER:

Q. Let's talk about today. Let's talk about Dr. Corbett today. The moral values that you are sitting here with in September of 1997.

As you look back do you believe in the 1960s a cigarette company should have made public all adverse information they had about cigarette smoking in public health?

MS. MARTIN: Objection, form.

THE WITNESS: I don't know if I can comment how they should respond in the 1960s.

BY MR. KAYSER:

Q. That's your answer?

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A. That's my answer.
Q. Let's talk about today. If the cigarette companies today have information that cigarette smoking is injurious to the public health do you think they have an obligation to tell the public about it today?
MS. MARTIN: Objection, hypothetical.
THE WITNESS: I would hope they would.
BY MR. KAYSER:
Q. Do you think they have a moral obligation to do it, Doctor?
A. I think they have an obligation to.
Q. Is that a moral obligation?
A. I've answered.
Q. Pardon?
A. I've answered it.
Q. What kind of obligation is it? Moral obligation, legal obligation?
A. I don't know if they have a legal obligation. I don't know what the obligation is under legal context now.
Q. You're willing to make a statement with respect to a legal obligation. Do the cigarette companies today have a moral obligation in your view to make public all information that talks about the health

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risks of smoking?
A. Yes.
Q. Doctor, looking at paragraph 3 of Exhibit 3331. If you would read that paragraph.
MS. MARTIN: Where are you?
BY MR. KAYSER:
Q. Paragraph 3. It's numbered 3. Doctor, as you can see the document from one of the defendants here is talking about, "There are so many potentially irritating substances in cigarette smoke that it is unlikely to be practicable to determine which compounds, in the quantities in which they are present in cigarette smoke, actually do cause the irritation and airways constriction that lead to chronic bronchitis and emphysema."
Is that information you think the tobacco companies should have made public in 1967?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know if I can answer how it was used. I don't know what their obligation was in 1967 to use this.
BY MR. KAYSER:
Q. Well, as you look back today as a man who has treated thousands of patients since 1974, if you had been a treating physician in 1967 would you have

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expected the cigarette companies to make this information in paragraph 3 of Exhibit 3331 public?
A. No.
MS. MARTIN: Object to form.
BY MR. KAYSER:
Q. Why not?
A. I don't know what their obligation is and --
Q. Would you have expected them to make it public?
A. Would I have expected them to?
Q. Yes.
A. No.
Q. Pardon? I didn't hear your answer.
A. You're asking would I have expected them to?
Q. Yes.
A. I don't think they would make this public.
Q. Why not?
A. I don't know what their obligation is to make this public. It's an internal document.
Q. Doctor, I'm showing you what has been marked as Plaintiffs' Exhibit 156. I recognize this is a little hard to read, but I'm sure you can.
A. Nearly impossible.
Q. My copy is a little better. Mine is written in red so maybe that will help you a little bit. I've underlined it in red and I think that the print is a

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little easier to read, is it not?
Go down to the third paragraph. This is also a document from one of the cigarette companies that has hired you in this matter.
Do you see in the third paragraph, "I would be more cautious in use the pharmic-medical model. Do we really want to tout cigarette smoke as a drug? It is, of course, but there are dangerous FDA implications to having such conceptualization go beyond these walls." Can you read that?
A. I can read it. Can I make a comment? You keep referring me to be an employee hired by the drug companies.
Q. Cigarette companies.
A. I really have been hired by Shook, Hardy & Bacon and Doherty, Rumble to review specific cases and not to review all of this literature.
So I don't consider myself to be an employee of the drug companies. I've been asked to review certain cases by the legal counsel.
Q. Doctor, I'm not saying you're an employee in the classic sense of the cigarette companies, but you have been hired by the cigarette companies in this case because they are paying your bill.
A. I have been employed to look at very specific

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cases, not to review all this.
Q. I understand you have not been hired to review all of the documents we're reviewing right now, but you have been hired by the cigarette companies to testify in this case. I don't think there is any doubt about that.
A. Only indirect.
Q. They're paying your bill. Whether they're paying it through the attorneys or not, they are ultimately paying your bill, so you have been hired by the cigarette companies in this matter.
As I say, I don't know what portions of this deposition are going to be used where so each question may be in and of itself a separate question, so there is some repetition involved.
Back to the issue here. Do you see where one of the cigarette manufacturers is saying that cigarette smoke is a drug?
A. I can read this, yes.
Q. Do you see where the date of this is 1969?
A. Yes.
Q. Do you believe that cigarette smoke is a drug, Doctor?
A. Do I believe it?
Q. Yes.

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MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know.
BY MR. KAYSER:
Q. You don't have any idea?
A. That the smoke is?
Q. Yes. Do you believe that cigarette smoke is a drug?
A. I guess I've never really thought about it as a drug.
Q. Do you think that nicotine is a drug?
A. I always thought of it as being a chemical, not in terms of a drug.
Q. Do you think that cigarette companies in 1969 should have made public its belief that it felt that cigarette smoke was a drug?
MS. MARTIN: Objection to the form.
THE WITNESS: I don't know what their obligation was in 1969 to report this.
BY MR. KAYSER:
Q. As you sit here today on the 15th of September, 1997, if someone in the cigarette company believes that nicotine is a drug do you think they have an obligation to divulge that to the American public?
A. If they had evidence of that.
Q. Is the answer yes?

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A. If they had evidence, yes.
Q. Doctor, I'm showing what you has been marked as Plaintiffs' Exhibit 301, a document produced by one of the defendants that has hired you in this matter.
A. As long as each statement has to be clarified, I would like to clarify my relationship with the tobacco companies in that I was hired by the defendants' lawyers to review specific cases, not necessarily to comment on these documents.
Q. I understand that they didn't ask you to comment on the documents I'm showing you, Doctor, but I also think that everybody sitting in this room knows that the cigarette companies are paying your bill and I assume you're billing them to be here today.
A. I'm billing the defendants' lawyers.
Q. And you know that the defendants' clients will ultimately pay your bill today?
A. I would expect.
Q. Do you see this document, Exhibit 301, is dated March, 1978?
A. Yes.
Q. Do you see the first several sentences of that first paragraph, that is paragraph numbered one? There has been no change in the scientific basis for the case against smoking. Additional evidence of

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smoke-dose related incidence of some diseases associated with smoking has been published. But generally this has long ceased to be an area for scientific controversy." Do you see that?
A. Yes.
Q. Do you know, Doctor, over the years the cigarette companies have denied there is a link between cigarette smoking and disease?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know what they've done or not done. I've only read what I have read in the paper.
BY MR. KAYSER:
Q. Don't you know from reading in the paper?
A. That's secondhand information.
Q. From what you've read in the paper don't you know that the tobacco companies over the years have denied there is any linkage between cigarette smoking and disease in human beings?
MS. MARTIN: Object to form.
THE WITNESS: I don't know if the newspaper is a place where one can get real precise information so it might be -- I'm not sure if it wouldn't be considered hearsay.
BY MR. KAYSER:

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Q. So let's consider it hearsay. Don't you know that over the years that the tobacco companies have denied a link between smoking and disease?
A. That's what I've read in the newspapers.
MS. MARTIN: Objection. Foundation.
BY MR. KAYSER:
Q. And if during those years the cigarette companies actually knew there was a link between smoking and disease don't you think they would have an obligation to tell the public?
A. If there was a link?
Q. Yes.
A. Then my feeling is we should have known.
Q. And the tobacco companies should have told you that?
A. I don't disagree.
Q. Now, Doctor, you were practicing medicine in March of 1978, weren't you?
A. Yes.
Q. Were you practicing medicine in St. Paul, Minnesota in March of 1978?
A. Yes.
Q. Did you have private patients in March of 1978?
A. Yes.
Q. In March of 1978 would it have been helpful for

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you to know that the cigarette companies had the information contained in paragraph 1 of Exhibit 301?
A. I -- first of all, that probably would have been speculative how this was going to help me in 1971.
Q. 1978.
A. 1978.
Q. But would it have been helpful for you to know that the cigarette companies had this information in 1978?
A. I'm not sure this would have made my discussion with my patients different.
Q. Would it have led some authority with your patients in telling your patients what the cigarette companies have set forth in paragraph one?
A. It might have, but that's speculative.
Q. What do you think?
A. I don't know.
Q. There are patients who depend on you for information, aren't there, Doctor?
A. I think it's speculative as to how they would have responded to it, so I don't think --
Q. But it is your hope that your patients will take your advice about health, right?
A. No question.
Q. And the more information you have, the better

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you are to inform your patients; isn't that correct, Doctor?
A. Yes.
Q. So if you had this information that's contained in paragraph 1 of Plaintiffs' Exhibit 301 would that have been helpful for advising your patients with respect to the benefits of smoking cessation?
A. I think it might have been helpful, but it's speculative how they would respond.
Q. It's always speculative how your patients will respond, but you're always hopeful they will respond positively in your advice, isn't it?
A. I would hope so.
Q. Doctor, I show you what has been marked as Plaintiffs' Exhibit 417 previously in this litigation. Do you see that this is from The Tobacco Institute?
A. Yes.
Q. And it's a press release; isn't that right?
A. It says for release. I'm not sure what it's released to.
Q. Do you see that it refers in the third line to the 1972 report of the Surgeon General?
A. Yes.
Q. And do you see that press release from The

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Tobacco Institute says, "The number one health problem is not cigarette smoking, but is the extent to which public health officials may knowingly mislead the American public?"

A. Okay. Can I read the whole paragraph here?

Q. Sure.

A. Yes.

Q. Doctor, in the years that you've been practicing medicine has it been your view that public health officials have knowingly misled the American public?

A. I don't know that.

Q. In the years that you've been practicing medicine do you know whether the Surgeon -- is it your view that the Surgeon General has ever tried to knowingly mislead the American public?

A. Not that I know of.

Q. If The Tobacco Institute in 1972 or any of the members of The Tobacco Institute had information about injurious effects about cigarette smoking do you think that those entities should have made that public?

A. I don't know what their obligation was in the 1970s to release this information.

Q. Notwithstanding their obligations, what do you think they should have done?

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A. I think it would have been helpful to have any information which would to be helpful to advise my patients.

MR. KAYSER: Off the record.

(Discussion held off the record.)

BY MR. KAYSER:

Q. Doctor, we're looking at Plaintiffs' Exhibit 443 which as you can see in the upper right-hand corner is dated the 27th of October, 1976. This was after you began practicing medicine in St. Paul; is that right, sir?

A. Yes.

Q. Do you see the first sentence? It says, "The public position of tobacco companies with respect to causal explanations of the association of cigarette smoking and diseases is dominated by legal considerations."

A. Yes.

Q. Does that suggest to you that information about the adverse consequences of smoking and public health are being suppressed because of legal considerations?

MS. MARTIN: Objection. Foundation. Form. Argumentative.

THE WITNESS: I don't know.

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MS. MARTIN: Asserts facts not in evidence.
THE WITNESS: I don't know.
BY MR. KAYSER:
Q. And can you drop down to about two thirds of the way down where it says "The industry has retreated?" Do you see that?
A. Yes.
Q. "The industry has retreated beyond impossible demands for "scientific proof" whereas such proof has never been required as a basis for action in the legal and political fields."
A. Yes.
Q. Do you believe that the cigarette companies were putting up impossible demands for scientific proof in the seventies with respect to the causation between cigarette smoking and public health issues?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know what the cigarette companies were doing in the 1970s.
BY MR. KAYSER:
Q. Do you know what they're doing today?
A. No.
Q. Do you know whether the cigarette companies are suppressing information today with respect to the

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consequences of smoking and disease that --
A. I don't know.
Q. If you found out today would you be appalled?
A. I would be upset.
MR. KAYSER: Would you mark this?
(Plaintiffs' Deposition Exhibit 3332 - BATCo document - marked for identification.)
BY MR. KAYSER:
Q. Now, Doctor, this is a document produced by one of the defendants in this lawsuit that's hired you in this matter, and as you can see it talks about the 1979 Surgeon General's report. Do you see that, sir?
A. I'd like to go back and object to the claim that the drug --
Q. Not the drug company.
A. The tobacco companies are my direct employer here.
Q. Well, they're paying your bill, sir.
A. I would like to point out again that I have been asked to review specific cases and to see how that fits into this litigation, not to comment about this.
Q. You see, Doctor, that this is discussing the 1979 Surgeon General's report?
A. I can see it refers to the Surgeon General's report. Okay.

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Q. I'd like to have you turn to page 10 of the document, sir.
A. Okay.
Q. And if you would look at that first paragraph on page 10 even though it's continued from a previous page.
Do you see where it talks about the TI whitewash attempt, "The Continuing Controversy?" The first paragraph towards the end, last four lines.
A. Yes.
Q. Have you ever heard the term "The Continuing Controversy" with respect to tobacco and health matters?
A. No.
Q. Is this the first time that you ever heard about it when I'm telling you about it today? And don't refer to any conversation with your counsel.
A. Continuing controversy in terms of what?
Q. Whether cigarette smoke causes health problems in human beings.
A. I think I would have to -- I think obviously I would have to put this in the context of a bigger situation, and I'm not sure taking these four lines out of this report which I've never seen before I can comment on very well.

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So you could maybe explain to me in some detail what I'm commenting about.
Q. Have you ever heard the term "The Continuing Controversy" as it relates to cigarette smoking and health?
A. Specifically that term?
Q. Yes.
A. No.
Q. Today without making any reference to any conversations you had with counsel sitting at this table or any other lawyers who are involved in this litigation have you ever heard the term "The Continuing Controversy" as it relates to whether cigarette smoking causes disease in human beings?
A. As it's quoted as the way you're saying it and this, I just don't recall.
Q. Over the years you say you've read newspaper reports about smoking and health?
A. Yes.
Q. And you say over the years you have read newspaper accounts of what the cigarette companies have said about smoking and health; is that right?
A. Yes.
Q. In those things -- in those newspaper articles that you have read over the years have you ever heard

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the cigarette companies refer to "The Continuing Controversy" about the health effects of cigarette smoking?
A. I don't recall that phraseology.
Q. Have you ever heard the phraseology there is a raging debate about the issue of cigarette smoking and health?
A. I don't recall.
Q. Have you ever heard the term that is "an open question" with respect to the linkage between cigarette smoking and the adverse consequences to human health?
A. I don't recall.
Q. In 1979 you'd been practicing medicine for five years, Doctor; is that right?
A. Yes.
Q. In 1979 were you advising your patients not to smoke?
A. Yes.
Q. In 1979 were you advising your patients not to smoke because you felt that smoking was injurious to their health?
A. Yes.
Q. In 1979 were you advising your patients who were smoking to stop smoking?

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A. Yes.
Q. Were you telling them to stop smoking because you felt smoking was injurious to their health?
A. Yes.
Q. Was there any doubt in your mind in 1979 that cigarette smoking was injurious to human health?
A. I didn't have any doubt.
Q. Pardon me?
A. I didn't have any doubt.
Q. And if the cigarette companies were trying to create doubt in the public's mind would you have thought that unethical on the part of the cigarette companies?

MS. MARTIN: Objection. Form. Foundation.

THE WITNESS: I would have found that objectionable.

BY MR. KAYSER:
Q. On ethical grounds?
A. If you will.
Q. What?
A. If you will.
Q. Is that a yes?
A. Yes.
Q. Objectionable on moral grounds?

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A. I don't know if I can separate those two out.
Q. If you found in 1979 that tobacco companies had specific information that cigarette smoking was injurious to the public health and suppressed that information from the public would you be appalled?
A. I would find that upsetting.
Q. Doctor, would you turn to page 15 please of the exhibit, myocardial infarction?
A. Yes.
Q. Today do you believe that the association of myocardial infarction of smoking is strong in younger age groups?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I think there is a definite association.
BY MR. KAYSER:
Q. Strong association?
A. I don't know how strong --
Q. Pardon me?
A. I'm not sure how they're defining or you're defining strong.
Q. I'll define it in your terms, Doctor.
A. You're asking the question.
Q. I understand that, but we are speaking a common language here. Do you think there is a strong

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association between myocardial infarction and smoking in younger age groups?
A. I think there is a definite association.
Q. But you can't avoid characterizing whether it's strong, moderate or weak?
A. I don't know how those are being defined.
Q. I'll define them in your terms.
A. I would rather you define the terms and I'll respond to it.
Q. Well, we can't define every word that we're asking here.
A. That's why I'm not using it.
Q. So you -- fine.
MR. KAYSER: Let's have this marked.
(Plaintiffs' Deposition Exhibit No. 3333 - RJR document - marked for identification.)
BY MR. KAYSER:
Q. Doctor, I'm showing you a document that has been marked as Plaintiffs' Exhibit 3333. This is a document produced by R.J.R., one of the tobacco companies that has hired you in this matter.
A. Could we go back and redefine that again?
Q. Redefine what?
A. My relationship with the tobacco companies.
Q. If you wish.

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A. I would like to just clarify once more that I was asked to review specific cases by the plaintiffs -- or the defendants' attorneys, not to review this literature and they were -- I feel that I'm working for the law firms.
Q. And you were hired ultimately to testify in January or February of 1998 in St. Paul in this matter?
A. Potentially.
Q. And you know the cigarette companies are ultimately paying your bills?
A. I suspect they are.
Q. Now, Doctor, this is a document from 1978. As you can see from the second page as opposed to the first page, the lower right-hand corner, January 6, 1978?
A. Yes. There is actually two dates here, one is January 6, 1978 and there is an August 25, '78.
Q. I think the August 25, '78 has to do with having someone received it. I don't know that for a fact so I can't represent that, but since the typed date January 6, 1978 seems to be typed in -- in any event, it's 1978, correct?
A. Yes.
Q. We will agree on 1978?

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A. Yes.
Q. Let's go over to page 1. Are you with me on The Effect of the Less Harmful cigarette on Cardiovascular Disease as an introduction?
A. Yes.
Q. Again, this is a document from one of the cigarette companies, Doctor. Do you see where they're talking about the literature providing you a wealth of information regarding cigarette smoking to an increased incidence of cardiovascular disease and in particular, myocardial infarction?
A. The literature? I'm having a hard time finding where when you say refers to the literature.
Q. Right under the word introduction.
A. We're on a different page.
Q. Doctor, if you can think back to 1978, and I know that's probably difficult for all of us, but it was four years after you began practicing medicine in St. Paul.
Do you believe that cigarette smoking led to an increased incidence of cardiovascular disease and in particular myocardial infarction?
MS. MARTIN: Objection. Foundation.
THE WITNESS: It's my feeling that smoking adversely affects the risk of heart disease.

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BY MR. KAYSER:
Q. Do you believe that in 1978?
A. Yes.
Q. And you believe it today?
A. Yes.
Q. Strong association, moderate association, weak association?
A. I don't think we would define that.
Q. And you can't tell me?
A. No.
Q. Pardon?
A. Without defining these terms, I don't think we can do that and I think you're the one that's asking.
Q. Would you drop down to background and the third line where it says autopsy studies have shown coronary atherosclerosis to be more frequent and more extensive in cigarette smokers than in non-smokers?
A. Yes.
Q. And do you believe that to be the case?
A. I don't think I can comment on what these studies show. I don't know the studies.
Q. Doctor, if you turn over to page 2 please, towards the bottom of the page, second to last paragraph.
Would it have been helpful for you in 1978 to

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have had the tobacco companies or R.J.R. specifically tell you that R.J.R. knew that coronary heart disease death rates are significantly higher for smokers of high tar nicotine smokers than lower tar nicotine smokers?
MS. MARTIN: Object to the form.
THE WITNESS: I think that would be speculation in 1978.
BY MR. KAYSER:
Q. Do you think that would have helped you in advising your patients?
A. It may or may not have.
Q. Would you look at the top of page 3, Doctor? Actually you should turn back to page 2 and read the first two words on the bottom of the page there.
Do you see on the bottom of page 2, "A significant reduction in risk appears to occur soon after smoking cessation indicating at least a portion of the effect on myocardial infarction is acute?"
A. Yes.
Q. First of all, did you believe in 1978 that there is a reduction in risk after smoking cessation?
A. Yes.
Q. Did you believe in 1978 that the effect in smoking in myocardial infarction was acute?

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A. I don't think I knew at that time.
Q. Do you believe that now?
A. Yes.
Q. Doctor, going down on page 3, why don't you read the objective and tell me when you're done reading. Read it to yourself.
A. Okay.
Q. Doctor, do you think that a major cigarette manufacturer should have publicly acknowledged these health risks that are set forth on page 3 of Exhibit 3333 in 1978?

MS. MARTIN: Objection. Foundation.

THE WITNESS: These look like they're objectives for a study that's being started.

BY MR. KAYSER:
Q. It also mentions the health risks of cigarette smoking, doesn't it?
A. Well, it mentions the health risks of smoking, but it also is an objective, at least my understanding of doing studies that you set out purposes for doing the study which means that they're an investigation.

So I'm not sure that that -- until you finish your objectives that you -- that you finish the studies.

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Q. On page 3 of Exhibit 3333 do you deny that the cigarette company here is acknowledging certain health risks of smoking?
MS. MARTIN: Object to the form.
THE WITNESS: I think this is being taken out of context in this format of this paragraph.
BY MR. KAYSER:
Q. So you think that the cigarette company is not acknowledging in this paragraph, page 3 of Exhibit 3333, the health risks of smoking?
A. I don't think I can comment on that.
Q. Why not?
A. Because I think we're -- to me this looks like this is an objective part of a grand proposal almost.
Q. Doctor, would you turn to page 6 please? If you would read page 6 to yourself and tell me when you're done please, I would appreciate it.
A. All right.
Q. Doctor, do you agree that on page 6 of Exhibit 3333 the cigarette company, R.J.R., is discussing the health risks of smoking?
A. It would appear to be.
Q. And also page 6 discusses the benefits of smoking cessation; isn't that right, sir?

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A. It would appear to be.
Q. Do you think that the R.J.R. cigarette company had a duty in 1978 to make this information that it knew public?
MS. MARTIN: Objection to form and foundation.
THE WITNESS: I don't know what their obligation in 1978 is for them to report this ongoing study.
BY MR. KAYSER:
Q. Do you think they had a moral obligation in 1978 to make the information on page 6 public?
A. If this is the outcome of their study. This to me, again, looks like part of a discussion of a studied proposal.
Q. But they are talking about information they have as of 1978; isn't that right, sir?
MS. MARTIN: Object to foundation.
THE WITNESS: I don't know if I can comment about where this information is coming from which is not in this part of the report.
BY MR. KAYSER:
Q. This is information that R.J.R. had in 1978; isn't that right, sir?
MS. MARTIN: Are you referring to a

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specific sentence or line?
BY MR. KAYSER:
Q. The information contained in page 6 of Exhibit 3333 with respect to smoking and health is information that obviously R.J.R. had in 1978; isn't that right?
A. Well, the information stated on this page is obviously available to them.
Q. And do you think that that information that R.J.R. knew of in 1978 should have been made public by R.J.R?
A. I don't know.
Q. Why not?
A. I don't know what their obligation was in 1978 to publish this information or the information they have.
Q. Do you have a recollection of your own set of moral values in 1978, Doctor, as you sit here today?
A. I think so.
Q. In the context of the set of moral values that you had in 1978, keeping in mind the dedication that you had to your patients in 1978, trying to help your patients, do you think that R.J.R. had an obligation to make public the information that is set forth on page 6?

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MS. MARTIN: Objection. Foundation.
THE WITNESS: I think that, you know, any information that is helpful in making a decision would be -- should be available.
BY MR. KAYSER:
Q. Do you think the information on page 6 falls into that category?
A. Yes.
Q. Doctor, I'd like to have you take a look at page 7 in the -- just read paragraph 2 to yourself if you would please, sir.
A. Okay.
Q. Have you read paragraph 2?
A. Yes.
Q. You'll note the last sentence, "It is also seen that those smoking non-filter cigarettes are at a greater risk for myocardial infarction than those smoking the same number of filter cigarettes." Do you see that?
A. I can see that statement.
Q. Do you think R.J.R. had a duty to make that public in 1978?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I haven't seen the data for which this has been collected.

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BY MR. KAYSER:
Q. This is the data R.J.R. had as of 1978; isn't that right?
A. This is a statement they're making in 1978.
Q. Do you think in 1978 R.J.R. had an obligation to the public to tell the public that those smoking non-filtered cigarettes are at a greater risk of developing myocardial infarction than those smoking filtered cigarettes?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I have not seen the data from these tables that they're referring to.
BY MR. KAYSER:
Q. So what, if you'll pardon my asking?
A. Well, I think -- they keep referring to in the statement above this two different tables.
Q. But they are saying -- the statement says in general it is also seen that those smoking non-filtered cigarettes are at a greater risk for developing myocardial infarction than those smoking filtered cigarettes.
That's the conclusion that is being reached, isn't it, Doctor?
MS. MARTIN: By whom?
THE WITNESS: If that's the

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conclusion.
BY MR. KAYSER:
Q. Pardon me?
A. I said if that's the conclusion they have come to.
Q. Let's assume for a moment that is the conclusion they have come to and that information is known to R.J.R. Do you think R.J.R. has an obligation to tell the public that those smoking non-filtered cigarettes are at a greater risk for developing myocardial infarction than those smoking filtered cigarettes?
A. If that's information they have available and a conclusion they have come to, and if this represents that, then I think we should know.
Q. Pardon?
A. Then we should know.
Q. And if R.J.R. supressed that information and didn't tell the public would you consider that an immoral act?
A. In the context of what was happening in the 1970s, I don't know.
Q. Do you think that makes what happens in the 1970s as to whether it's a moral or not a moral act, Doctor, that --
A. In terms of a moral or immoral --

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Q. Pardon?
A. In terms of an immoral or moral act, the date doesn't make a difference, but I don't know what their obligation was in the seventies. I think we should know.
Q. In 1978 you had been practicing for four years at St. Paul with patients. Would it have been helpful for you to know in 1978 in advising your patients that those smoking non-filtered cigarettes were at a greater risk for developing myocardial infarction than those smoking filtered cigarettes?
A. I could have used the information.
Q. Doctor, would you turn to page 10 please? I'd like to have you read the first paragraph, sir, on page 10.

MS. MARTIN: Starting with it seems evident?

MR. KAYSER: Right.

THE WITNESS: Okay.

BY MR. KAYSER:
Q. Have you seen cigarette advertising over the years, Doctor?
A. I've seen it.
Q. Joe Camel?
A. Yes.

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Q. Have you see Marlboro Man?
A. Yes.
Q. Have you seen Marlboro Gear?
A. Marlboro what?
Q. Gear, G-E-A-R?
A. I'm not sure what you mean.
Q. If you don't know, you don't know.
A. No.
Q. Did you ever watch cigarette advertising on TV before it was banned?
A. I didn't pay attention that much then.
Q. Was it your view that cigarettes were advertised to young people?
A. I don't know.
Q. You have no opinion on that issue?
A. No.
Q. As your children were growing up, Doctor, were you concerned about the fact that they might start smoking?
A. Yes.
Q. You were concerned because of their health; isn't that right, sir?
A. Yes.
Q. Were you concerned about cigarette advertising and inducing your children to smoke?

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A. I paid attention, yes.
Q. Was it your belief that the cigarette advertising was, in fact, designed to induce your children to smoke?
MS. MARTIN: Objection. Asked and answered.
THE WITNESS: I don't know.
BY MR. KAYSER:
Q. You don't know?
A. I don't know.
Q. Would you look down at the bottom of page 10, Doctor, and on the top of page 11? For heavy -- let me back up.
Bottom of page 10, top of page 11 I quote, "For heavy smokers the risk of sudden death in myocardial infarction is four times greater than in non-smokers."
A. Yes.
Q. Do you believe that to be true?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know where the statement in this document came from, so I don't know.
BY MR. KAYSER:
Q. But as you sit here today do you believe that

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that statement is true?
A. Yes.
Q. Do you believe that R.J.R. had an obligation in 1978 to tell the public that for heavy smokers the risk of sudden death in myocardial infarction is four times greater than in non-smokers?
A. Would you repeat that?
MR. KAYSER: Why don't you read it back for him.
(Record read.)
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know what their obligation was in 1970 whatever.
BY MR. KAYSER:
Q. 1978.
A. '78.
Q. In 1978 do you think that R.J.R. had a moral obligation to the public, to tell the public, that it had information that indicated that for heavy smokers the risk of sudden death in myocardial infarction is four times greater than in non-smokers?
A. I would agree with that.
Q. You would agree that they had the obligation?
A. Yes.
Q. Would you be appalled if they suppressed that

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information?
A. I would be upset.
MR. KAYSER: Why don't we take a short break.
(Recess taken.)
BY MR. KAYSER:
Q. Doctor, I want to show you what I've just handed you, Plaintiffs' Exhibit 595, that has been previously marked in these proceedings --
A. Yes.
Q. -- and has been produced by one of the defendants in this matter that hired you with respect to these issues in this lawsuit.
It is by Francis Roe, as you can see, commenting on a document that has been produced I believe by one of the cigarette companies on smoking and health.
A. I would like to point out again that I was asked to review these cases by the two law firms represented here today, and not to specifically comment here about these --
Q. I understand that is true, but you are going to charge for your time today, are you not?
A. I am.
Q. And you understand that that bill will ultimately be paid by the cigarette companies,

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Doctor?
A. I suspect they will.
Q. Now, do you see where Dr. Francis Roe in commenting on a book called Smoking and Health feels that in the second sentence there it falls a long way short of credibility?
A. That's what it says.
Q. Now, if you'll turn to -- turn the page where Dr. Roe is commenting on substance.
A. Yes.
Q. And you see where he says, "It is really not true, as the American Tobacco Industry would like to believe, that there is a raging worldwide controversy about the causal link between smoking and certain diseases."
A. I can see that's what it says.
Q. Do you know that the American Tobacco Company was not being candid about the issues of the link between smoking and certain diseases?
A. I don't know.
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know.
BY MR. KAYSER:
Q. In 1982, Doctor, you had been in practice for eighteen years. Did you believe that the cigarette

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companies were telling the American public everything they knew about smoking and health?
MS. MARTIN: Objection. Foundation.
THE WITNESS: In 1982 I did not have the information personally one way or the other.
BY MR. KAYSER:
Q. In 1982 were you interested in whether or not the tobacco companies were being candid about cigarette smoking and the possible consequences to public health?
A. In 1982 I don't remember whether I was or was not.
Q. Well, you were concerned about your patients in 1982, weren't you, Doctor?
A. Yes.
Q. You also see in that paragraph that Dr. Roe is certainly making a strong case that there is, in fact, a strong case for a link -- strong link between cigarette smoking and lung cancer?
A. I'll have to read that paragraph.
Q. Please do that.
A. Okay.
Q. Have you read the paragraph?
A. I did. I think it's rather convoluted and --
Q. Well, Doctor, what Dr. Roe is commenting on is a

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draft of the document apparently that the cigarette industry was going to release, and he's talking about page 1, paragraph 6. Do you see that?
A. Yes.
Q. And don't you get the sense from what his comments are on that page 1, paragraph 6, that the tobacco industry is not being candid about the link between cigarette smoking and disease, and they are trying to cover up something?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I find it hard to interpret this paragraph.
BY MR. KAYSER:
Q. Really?
A. Yes.
Q. Okay. Let's go on to the next one.
MR. KAYSER: Let's mark this.
(Plaintiffs' Deposition Exhibit No. 3334 - BATCo document - marked for identification.)
BY MR. KAYSER:
Q. Doctor, I'm showing you what has been marked as Plaintiffs' Exhibit 3334, Bates stamp number on the first page is 103540950.
It has been produced by one of the cigarette companies that has hired you in this matter, and as

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you can see it is a 1982 document, sir.
A. Two things, yes, I can see it's a 1982 document. I would also like to state again that I was hired to review these cases by certain -- certain specific cases by these two legal firms, not to comment on this, so I haven't reviewed these.
Q. I understand that you haven't reviewed these and I -- while although I did pre-designate them, Doctor, five days ago, I thought perhaps five days ago you might have seen them in the intervening days. You haven't seen these before?
A. No.
Q. And I think we agreed previously the cigarette companies will ultimately be paying your bills, have we not?
A. I suppose indirectly.
Q. You'll bill the law firm, the law firm will pay you and the law firm will be paid by the cigarette companies, right?
MS. MARTIN: Objection.
THE WITNESS: That's my assumption.
BY MR. KAYSER:
Q. Doctor, as you read the first paragraph in the first sentence, "The evidence that risk of lung cancer and other smoking-associated diseases (SAD) is

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strongly dependent on the number of cigarettes smoked by a smoker and the evidence suggesting that tar is the component of cigarette smoke responsible for this association has resulted in the conclusion that smokers would reduce their risk of SAD by smoking cigarettes with a reduced tar delivery." Do you see that?
A. Yes.
Q. Do you believe that any cigarette company having this information in that paragraph should have made it public in 1982; that is, they had a moral obligation to do so?
A. I think that the -- if this is the information that they had in 1982, and this is correct, it would have been helpful for us to know this.
Q. By us you mean members of the medical profession?
A. Yes.
Q. Do you think the failure of a cigarette company to make that information public would be an immoral act?
A. I guess it depends on how you define immoral.
Q. In the context of your moral values, sir.
A. I think they would have an ethical responsibility to report information that they knew.

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Q. As set forth in the first paragraph of Exhibit 3334, sir?
A. If that's what they had.
Q. Doctor, I'm showing you what has been previously marked as Plaintiffs' Exhibit 593 in this matter. As you can see, that is a document dated 1983.
A. Yes.
Q. Would you take a look at the last page, sir?
A. Yes.
Q. This, by the way, comes again from one of the defendant cigarette companies' documents, Doctor.
A. Yes.
Q. Do you see where it says in the middle of that page, "To persist in stressing controversy, where little or no evidence for such controversy is seen to exist, can only result in a complete loss of credibility." Do you see that?
MS. MARTIN: What page are you on, Counsel?
MR. KAYSER: The very last page.
BY MR. KAYSER:
Q. Let me start over again. We're on the last page, page 5. Do you see that?
A. Yes.
Q. "To persist in stressing controversy, where

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little or no evidence for such controversy is seen to exist, can only result in a complete loss of credibility." Do you see that?
A. Yes.
Q. Do you recall in the 1980s cigarette companies were telling the public there was a controversy about the health effects of smoking?
MS. MARTIN: Objection. Asked and answered.
THE WITNESS: I don't know.
BY MR. KAYSER:
Q. I'm showing you, Doctor, what has been previously marked as Plaintiffs' Exhibit 502 in this matter which is a document from I think 1980 or 1986. I can't tell what's in the upper right-hand corner there.
A. I can't either.
Q. Let me ask you this before we refer to the document, Doctor: Do you find that most physicians do not smoke?
MS. MARTIN: Objection. Foundation.
THE WITNESS: As best I know most physicians have stopped smoking.
BY MR. KAYSER:
Q. And most physicians in your experience have

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stopped smoking because of health reasons; is that right, sir?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I would assume that.
BY MR. KAYSER:
Q. Showing you a document, Plaintiffs' Exhibit 502, and as you can see, that has also been produced by one of the defendants in this matter. Doctor --
A. Yes.
Q. If you take a look at page 2, paragraph m, small m. Do you see that?
A. Yes.
Q. Paragraph m says, "The company's position on causation is simply not believed by the overwhelming majority of independent observers, scientists and doctors."
A. Yes.
Q. Has it been your experience as a physician over the last twenty-eight years, whatever, since 1974 -- Doctor, has it been your experience as a practicing physician since 1974 that the overwhelming majority of physicians believe that cigarette smoking causes human disease?
MS. MARTIN: Objection. Foundation.
THE WITNESS: It is my experience that

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physicians and practicing clinicians feel that there is an association between smoking and disease.
BY MR. KAYSER:
Q. Have you found that most doctors call it an association rather than cause, Doctor, in your experience?
MS. MARTIN: Objection. Foundation.
THE WITNESS: That would depend on the context in which that is used. If it's used in the public health context of is this bad for you, is this going to cause a problem, yes.
If we're talking about in the context of is this how it causes disease, then they would probably not use causation.
BY MR. KAYSER:
Q. They what?
A. Would not use cause.
MR. KAYSER: I would like to have the Court Reporter mark this as Plaintiffs' Exhibit 3335.
(Plaintiffs' Deposition Exhibit No. 3335 - article - marked for identification.)
BY MR. KAYSER:
Q. Doctor, I'm showing you what has been marked as Plaintiffs' Exhibit 3335 and is entitled "What Scientists Funded by the Tobacco Industry Believe

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About the Hazards of Cigarette Smoking."
If you look if in the lower right-hand corner I think you will see this appears in a publication of July, 1991. Is that on your page?
A. Yes.
Q. It's also on the -- the next page in the lower left-hand corner, you will see a little bit more of it. I just want to be sure we're on the same page.
A. I don't have dates on it.
MR. KAYSER: I will show you that it's 1991. So we will agree that Exhibit 3335 comes from 1991. Is that okay?
MS. MARTIN: And Public Health Briefs?
MR. KAYSER: It appeared in the American Journal of Public Health.
THE WITNESS: It's on my front page under the abstract.
BY MR. KAYSER:
Q. Are you familiar with the American Journal of Public Health, sir?
A. No.
Q. You've never heard of it before today?
A. I've heard of it.
Q. Is it a reputable publication?

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A. I would assume it is, but I don't know.
Q. Have you ever seen anything from the American Journal of Public Health before this moment?
A. I don't recall.
Q. Pardon me?
A. I don't recall.
Q. Why don't you take a moment, Doctor, and read this document.
MR. KAYSER: We can go off the record.
(Discussion held off the record.)
BY MR. KAYSER:
Q. Doctor, you read Plaintiffs' Exhibit 3335?
A. Quickly.
Q. And you understand it's a survey of what scientists funded by the tobacco industry believe about the hazards of cigarette smoking?
A. Yes.
Q. Did you answer that?
A. Yes.
Q. Yes, you answered it and yes, you understand it?
A. Both.
Q. Thank you. First of all, let's start with the abstract. You see that in 1991 it says, "The tobacco industry denies that smoking has been proven to cause disease."

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A. This is in the abstract?
Q. Yes. The first sentence of the abstract, left-hand side. "Despite overwhelming evidence documenting the hazards of cigarette smoking, the tobacco industry denies that smoking has been proven to cause disease." Do you see that?
A. I see that.
Q. In 1991 were you aware despite overwhelming evidence the tobacco industry denied that smoking had been proven to cause disease; were you aware of that in 1991?
A. I don't recall.
Q. At any time do you believe that the cigarette industry has admitted that smoking has been proven to cause disease?
A. I don't know.
Q. Just as a matter of a citizen of this country, Doctor, who reads the newspapers presumably on a regular basis are you aware of any instance up until today where any cigarette company has admitted that smoking has been proven to cause disease?
A. Has been proven to cause disease?
Q. Yes.
A. Has been associated with disease.
Q. Pardon?

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A. Am I aware that cigarettes are associated with the causes of disease?
Q. Yes.
A. Yes.
Q. Cigarette companies have admitted that?
A. If I'm reading what's in the newspapers, correct.
Q. When was the first time that the cigarette companies admitted that cigarette smoking is associated with or caused disease?
A. I don't recall.
Q. Any time in the last five years?
A. Probably.
Q. Pardon me?
A. Probably.
Q. Do you have as you sit here today a recollection of any time that a cigarette company has admitted an association between cigarette smoking and disease of human beings?
A. Not specifically.
Q. Let's turn to the second page, Doctor. Drop down to the third paragraph where it starts out ninety-four percent. Do you see that?
A. Yes.
Q. Ninety-four percent of respondents agreed with

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the statement "smoke from someone else's cigarette is harmful to a non-smoker."
Do you believe that smoke from someone else's cigarette is harmful to a non-smoker, Doctor?
A. Do I believe it?
Q. Yes.
A. Yes.
Q. How long have you believed smoke from someone else's cigarette is harmful to a non-smoker?
A. A number of years.
Q. More than ten?
A. It may be somewhere in that time frame.
Q. Do you see where in the next sentence -- again, we're quoting from Exhibit 3335, the second page, third paragraph. "Ninety-one percent agree that most deaths from lung cancer are caused by smoking." Do you see that?
A. Yes.
Q. Do you believe that most deaths from lung cancer are caused by smoking, sir?
MS. MARTIN: Objection. Foundation.
BY MR. KAYSER:
Q. Pardon me?
A. I'm responding to her.
Q. She can object. You still have to answer.

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A. I understand that.
Q. Let me ask you again. We're quoting from the third paragraph, page 2 of Plaintiffs' Exhibit 3335. Do you agree that most deaths from lung cancer are caused by smoking?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know how that information where you're stating it is being gathered, but do I -- you may want to rephrase that.
BY MR. KAYSER:
Q. We're reading from Exhibit 3335, Doctor. As you can see those scientists who are funded by the tobacco industry with respect to investigating smoking and health over the years ninety-one percent of those responding to the survey agreed most deaths from lung cancer are caused by smoking. Do you see that?
A. Yes.
Q. Do you believe that most deaths from lung cancer are caused by smoking in --
MS. MARTIN: Objection. Foundation.
THE WITNESS: I would say that I believe that smoking deaths are associated with lung -- smoking and lung cancer are associated; lung cancer deaths from cancer and smoking are associated.

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I would like in terms of this statement, the ninety-one percent, it looks like -- and I was trying to figure back here to see how many respondents there were, but only forty-six percent of the questionnaires were answered as I recall. So I don't know the validity of the statement as read.
BY MR. KAYSER:
Q. Do you think that the statement that most deaths from lung cancer are caused by smoking has no validity?
A. I think in terms of the ninety-one percent of the respondents, I don't know how valid that makes it. Do I personally believe?
Q. Yes.
A. Yes.
Q. You personally believe that most deaths from lung cancer are caused by smoking?
A. Yes.
Q. And you see the next sentence where it talks about seventy-six of seventy-seven agreed with the statement cigarette smoking is addictive?
A. Yes.
Q. Considering scientists who were funded by the tobacco industry think that cigarette smoking is addictive would you agree that cigarette smoking is

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addictive?
MS. MARTIN: Object to the form.
THE WITNESS: I think one has to be careful when forty-six percent of the questionnaires were responded to.
So I don't know how the other ones would respond. Do I personally?
BY MR. KAYSER:
Q. Yes.
A. Do I personally feel that it is addicting? I think in the sense that we used it before, yes.
Q. Doctor, we're talking about the forty-six percent rate. Would you look -- don't turn the page yet. Do you see where it says discussion?
A. Yes.
Q. And it says the low response rate is not unusual for a mailed questionnaire survey --
A. Yes.
Q. -- but does potentially limit the general ability of the findings?
A. Yes.
Q. But you understand that the respondents in this survey, even the forty-six percent that responded, were scientists paid by the tobacco industry in studying the health effects of smoking?

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A. That's what the paper says.
Q. Does common sense tell you that the cigarette industry knew about these findings before 1991?
MS. MARTIN: About this questionnaire?
BY MR. KAYSER:
Q. No. About what their own scientists believed about cigarette smoking and its health effects before 1991.
MS. MARTIN: Objection. Foundation.
THE WITNESS: I think it's speculation as to what -- how they would look at this prior to its publication.
BY MR. KAYSER:
Q. Do you think -- does common sense tell you that the cigarette industry is talking to the scientists that it funded over the years with respect to the health effects of smoking?
A. I hope they were getting that they were funded.
Q. Does common sense tell you that those scientists were telling the tobacco industry that they believed cigarette smoking caused disease in human beings over the years?
MS. MARTIN: Objection. Foundation.
BY MR. KAYSER:

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Q. Does common sense tell you that that would be true?
A. I honestly don't know what they were told, but common sense made me think that that's what they were told. That's speculation, but I would agree.
Q. Don't you think the tobacco industry, Doctor, would have an obligation to talk to these scientists that it was funding and ask them what they thought about the health effects of cigarette smoking?
A. I would hope so.
Q. And do you think, Doctor, that over the years the tobacco industry would have the obligation to the public to tell the public what the scientists that were being funded thought about the health effects of cigarette smoking?
MS. MARTIN: Objection. Foundation.
THE WITNESS: I don't know what their obligation was at the time.
BY MR. KAYSER:
Q. Do you think that the cigarette companies had a moral obligation to the American public to tell the American public that the scientists found that there was tobacco research in the effects of smoking and health?
Do you think it had an obligation to give those

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results to the American public?
A. Well --
Q. Do you want me to rephrase that question?
A. Yes.
Q. You have agreed with me, Doctor, that the tobacco industry had an obligation over the years to find out from its scientists what those scientists found with respect to the health effects of smoking, right?
A. Yes.
Q. Did the cigarette companies in turn have a moral obligation to the American public to tell the American public what it had determined from those scientists about the health effects of smoking?
A. I think it is my feeling that if they have this information available, that they have an obligation to do it, to make it available.
Q. To the public?
A. Yes.
Q. Right?
A. Yes.
Q. And it would be reprehensible for the tobacco industry not to make that health information available to the public, wouldn't it, Doctor?
A. I think they have an obligation to make it

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available.
Q. Don't you think it would be reprehensible for them to fail to make it available to the American public?
A. If you would like to call it that.
Q. Do you agree with that?
A. I think they have an obligation to make it available.
Q. You're talking about a public health issue, Doctor, that affects people who come to you for advice and come to physicians all over this nation for advice.
Wouldn't it be appalling to suppress information about the public health -- wouldn't it be reprehensible on the part of the tobacco companies to suppress information that the public ought to know about with respect to the adverse health consequences with respect to smoking?
A. I think it should be available.
MR. KAYSER: It's now 5:25. Why don't we wrap it up for today.
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C E R T I F I C A T E

I, NANCY K. JOHNS, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of VICTOR CORBETT, M.D. at the time and place aforesaid; and that the foregoing transcript consisting of pages 1 through 173 is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at Minneapolis, Minnesota, this 23rd day of September, 1997.

_____

Nancy K. Johns, Notary Public
Hennepin County, Minnesota
My commission expires January 31, 2000.

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C O N F I D E N T I A L

C E R T I F I C A T I O N

I, VICTOR CORBETT, M.D., the deponent, hereby certify that I have read the foregoing transcript consisting of pages 1 through 173, and that said transcript is a true and correct, full and complete transcription of my deposition except:

VICTOR CORBETT, M.D.
Deponent

Sworn and subscribed to before me this day of , 1997.

Notary Public
My commission expire

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